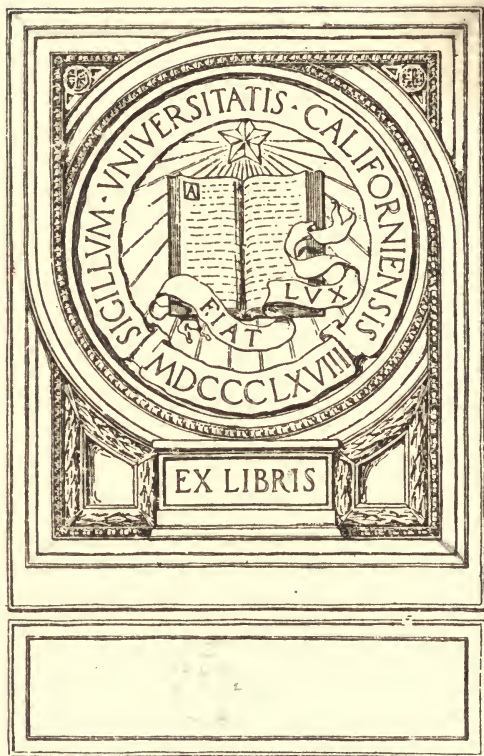


NOTES OF A BUSY LIFE

JOSEPH B. FORAKER



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TO VINU
AMBOGILAO



J. B. FORAKER WHEN ELECTED U. S. SENATOR, 1896.

NOTES OF A BUSY LIFE

BY
JOSEPH BENSON FORAKER

WITH PORTRAITS AND OTHER
ILLUSTRATIONS

VOLUME TWO

SECOND EDITION

CINCINNATI
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NOTES OF A BUSY LIFE

CHAPTER XXX.

IN THE SENATE.

I TOOK my seat in the Senate March 4, 1897,—the same day President McKinley and Vice President Hobart were inaugurated. It was my fortune, therefore, to witness officially both of these ceremonies; first, the inauguration of the Vice President in the Senate; and, next, the inauguration of President McKinley on the east portico of the Capitol, where he took the official oath, administered by Chief Justice Fuller, and delivered his Inaugural address.

President Cleveland with his Cabinet, President McKinley and his Cabinet, the Chief Justice, and the Associate Justices of the Supreme Court, all the foreign Ambassadors, and Diplomatic representatives then in Washington, both Houses of Congress, and all the prominent Government Army and Navy officials, together with a number of Governors of the States, and other distinguished citizens of the country, were in attendance upon both ceremonies.

As I took note of those who were going out and those who were coming in I was impressed with the wisdom of the framers of our Constitution in providing for the election of a House of Representatives every two years; a President and Vice President every four years, and the election of Senators for terms of six years. It secured a commingling of new and fresh political life and thought with the tried, experienced and stable.

This feature of our government was at that time brought to the attention of the American people generally by a number of important facts then fresh in everybody's recollection. When Mr. Cleveland was elected in 1884 with a Democratic majority in the House, although he personally entertained views with respect to our industrial policies, which, if given effect, would, according to Republican views, have worked disastrous results to the business of the country, yet there was not any appreciable interruption of our prosperity because it was plain to everybody from the first that there could be no legislation enacted hostile to the policies then in force because during his entire term the Republicans would have a majority in the Senate.

But when Mr. Cleveland was elected in 1892 the situation was different; he came into power pledged by his platform to a free trade policy and had a Democratic majority in both the House and the Senate to enact the necessary legislation to put such a policy into operation; and as a result, even before the legislation that was enacted could be put on the statute books, merely in anticipation of what was to come, the whole country took fright and "took in sail" in such a way as to cause business stagnation, depression and panic such as had not been known since the administration of James Buchanan.

It had been everywhere proclaimed during McKinley's campaign that he was, in the language of the time, "The Advance Agent of Prosperity"; that immediately upon his election the fires would be lighted in the furnaces; the mills and the factories would again be started; and that all who were idle would be called to employment; but at the time of his inauguration, four months after the election, there were yet no signs of business revival. The reason was plain, and impressive; it was due to the fact that the Republicans were then in the minority in the Senate, and, therefore, unable, without help from Democrats or Populists, to enact any legislation, with respect to either the tariff or the gold standard. Whether or not such help could be secured was entirely problematical. There was no safety except in

waiting to see, but this required delay and the result might be failure; the only thing that could be done was to mark time; and mark time the country did until the crucial point of danger had been successfully passed.

Prior to Mr. Cleveland's second term there had been much talk among agitators, reformers and malcontents about extending the term of the President to six or seven or even eight years, and making him ineligible for re-election.

As the country passed through the disastrous experiences of the '90s (when mills, factories, mines, workshops, and other kinds of industry were stopped or suspended and laborers by hundreds of thousands were turned into idleness, and soup-houses had become the order of the day) instead of talk of extending the Presidential term, there was substituted an expression of universal thankfulness that it was no longer than it was.

Ex-President Taft is reported in the newspapers (February, 1915) as making speeches and delivering addresses and lectures in different parts of the country in which, among other things, he has been advocating a seven years Presidential term; from this it appears that in spite of all his instructive experience, he has not yet become a good judge of the proper psychological moment for bringing forward new propositions; for at the very moment when he is again bringing this subject to notice the great majority of the American people are impatiently counting the days until there will come another opportunity for making a change of Presidents and policies. Some unforeseen event may change all this; all things are possible; especially to the party in power and able to take advantage of constantly arising opportunities to respond to public sentiment, but the probability is that the score against President Wilson is now too long for him to have enough good luck to overcome it. It is true Presidential elections are bothersome and expensive, but it is also true that now and then the people would gladly pay for the privilege of holding such an election, if they did not have it insured to them by the Constitution, any price, almost, that the wildest imagination might name. It was so under

Cleveland. It is so now, under Wilson. It has been so a number of other times. Elections cost millions; but there come times when they are worth hundreds of millions.

If today we had to wait five more years instead of only two, before we could have a Presidential election, it would be hard to exaggerate the despondency, gloom and despair with which the minds of our business men would be filled—except those who have “war orders.”

But there is a great compensation for the trouble and cost of our elections aside from all money or business considerations in the fact that they are not only educational as to the issues involved, but also wholesome in a patriotic sense; on account of this feature they are not only invaluable but indispensable in a free popular government.

George Washington and his compatriots, who constituted the Convention that framed our organic law, were a wise, conscientious, and patriotic body. They knew what they were doing when they fixed the respective terms for the offices they created. The passing years continually admonish us to make haste slowly in changing their work.

SOME OF MY COLLEAGUES.

When I had taken my seat I found myself surrounded by a Senate membership as able and as highly honorable to be associated with as any that body had ever known.

The presiding officer was the Vice President—the Honorable Garrett A. Hobart. He was a good parliamentarian, prompt and just in his rulings, and a genial, good hearted, loyal and faithful man who justly enjoyed the friendship and regard of the entire membership without respect to party.

His successor as Vice President was Theodore Roosevelt, who acted in that capacity only during the short session following his inauguration. But it was long enough to show that his peculiar qualifications for the public service fitted him better for wider, broader and more useful fields of labor.

The next Vice President during my service was Charles W. Fairbanks. I knew him long before we went to the Senate.

He was a man of the highest character, sensitively honorable, diligent, and faithful in the discharge of his duties, well worthy and fully meriting all the high honors he enjoyed.

Among the others on the Republican side, mentioning them in the alphabetical order of their States, were such distinguished leaders as George C. Perkins of California, Joseph R. Hawley and Orville H. Platt, and later Morgan G. Bulkeley and F. B. Brandagee of Connecticut; Porter J. McCumber and Henry C. Hansbrough of the Dakotas; Shelby M. Cullom and William E. Mason of Illinois; Charles W. Fairbanks and later Albert J. Beveridge of Indiana; William B. Allison and later Jonathan P. Dolliver of Iowa; William P. Frye and Eugene Hale of Maine; George F. Hoar and Henry Cabot Lodge of Massachusetts; Julius C. Burrows and later Russell A. Alger and after his death, William Alden Smith of Michigan; Cushman K. Davis and Knute Nelson of Minnesota; Thomas H. Carter of Montana; John M. Thurston of Nebraska; William E. Chandler and Jacob H. Gallinger of New Hampshire; William J. Sewell of New Jersey; Thomas C. Platt and later Chauncey M. Depew of New York; Boies Penrose and Matthew S. Quay and later P. C. Knox of Pennsylvania; Nelson W. Aldrich and G. P. Wetmore of Rhode Island; Justin S. Morrill and Redfield Proctor and later W. P. Dillingham of Vermont; Stephen B. Elkins and later Nathan B. Scott of West Virginia; John C. Spooner of Wisconsin and Clarence D. Clark and Francis E. Warren of Wyoming.

The mere mention of these names is sufficient to show that the Republican Party was then represented in the Senate by men well qualified to successfully deal with the serious questions that were soon to arise.

Among those I have mentioned was Justin S. Morrill, the author of the first Republican Tariff Law—that enacted under the administration of Lincoln in 1861. I can never forget with what veneration I regarded him. He had reached such an advanced age that he could not be the active leader he had been in former years, but he was a most lovable, as well as venerable man in his manner, appearance and inter-

course with his colleagues; and he was yet possessed of such sound judgment that his advice was largely sought and heeded.

Senator Morrill's colleague was the Honorable Redfield Proctor. He had been Secretary of War under Harrison and was noted for his strong, vigorous character and old-fashioned stalwart Republicanism. His views were exactly in accord with mine as to Cuba and that made us warm friends. His speech made after a visit to the Island gave great impetus to the cause of intervention.

Next to Morrill as the oldest member of the Senate in service stood Hon. William B. Allison of Iowa. Commencing with the 38th Congress March 4, 1863, he continued without interruption to represent his District in the House and his State in the Senate until his death in 1908.

He was a man of great ability of the sturdy wheel-horse variety. He had easy manners but positive convictions, for which on proper occasions he would contend strenuously, as his faithful and efficient work as Chairman of the Committee on Appropriations abundantly proved; but he was more distinguished for his suavity and general diplomacy than any other man I met in Washington. Without shirking his duty, or evading responsibility, or failing to say No when he thought he should, he yet so managed that he never took issue with anybody about anything unless there was some apparent necessity therefor, and when he did take issue, no matter how acute the controversy might be, he was so polite and deferential, without being obsequious, that he probably had more friends and fewer enemies than any other man in Congress.

As illustrating the extent to which he was distinguished for avoiding positive assertions, a story was told to the effect that while campaigning in Iowa a flock of sheep were driven in front of a farmer's house at which he and his party were stopping for dinner. Someone said to him: "Mr. Allison, there go some very fine sheep." To which he answered: "While I am not a sheep expert, yet I can see that they do appear to be a very fine flock indeed." Thereupon the other party ventured the further remark, "They have been recently

sheared." To which Mr. Allison responded, "Yes, they do appear to have been sheared; at least on this side." *

Rhode Island, the smallest State in the Union, had the honor of furnishing the Leader of the Senate on the Republican side, in the person of the Honorable Nelson W. Aldrich. He held his position by common consent because he had won it by the efficient way in which he discharged the duties of Senator. Being the Leader he properly held the position of Chairman of the Finance Committee. In this position it was both his opportunity and his duty to rightfully have more to say about tariff legislation than anybody else. He improved this opportunity and discharged this duty in the most successful manner; first, as to the McKinley Bill; later as to the Dingley Bill, and finally as to the Payne-Aldrich Bill.

Nobody disputed his leadership but some of us did not always agree with him. When we felt compelled to differ we did so not only with much regret and great deference but always in a good-natured way that never fractured personal relations.

William P. Frye was one of the old Senators when I took my seat. He had already won his spurs in the House, in National Republican Conventions, and in political campaigns. He was a gifted and forceful debater, both in the Senate and before public assemblages. He was the President pro tempore of the Senate, and was one of the readiest and most satisfactory Presiding Officers the Senate has ever had.

* This story with variations has been told many times. In Mr. Arthur W. Dunn's "Gridiron Nights" it appears as follows:

"One of the quips was directed at Senator Allison of Iowa, who, under no circumstances would commit himself. One time Allison called a newspaper man into his committee room and read him a long letter addressed to a constituent at home, and asked the correspondent what he thought of it.

"Well, Senator," replied the correspondent, with some hesitation, 'I don't think he will be able to make anything out of it.' 'That was the intention,' replied Allison, fairly beaming.

"A Gridiron minstrel started to tell the Allison sheep story. 'Oh, we have all heard about that,' said the interlocutor. 'The sheep were going by and some one remarked they had been sheared, and Allison replied, "It would appear that they are sheared—on this side." 'We've all heard that.' "That isn't it," replied the minstrel. What Allison said was, 'Well, as respects that matter, no one has demonstrated to me that they are sheep.'"

It is impossible to think of Senator Frye without thinking of his distinguished colleague, the Honorable Eugene Hale.

My first glimpse of him was when I sat in the gallery as a spectator at the National Republican Convention of 1876. Mr. Hale was a delegate from Maine and addressed the Convention on some point, I do not remember now what it was, standing upon his chair, and speaking with much fluency and effect.

He was always a handsome, well-groomed man, known as one of the best dressers in the Senate; but in 1876 he was young and full of activity and vivacity. He made a most favorable impression upon all who heard him.

Throughout his service in the Senate he was distinguished for his ability and conservatism. He was bitterly opposed to our intervention in Cuba and the acquisition of the Philippines. On this account he was censured by the unanimous vote of the Legislature of Maine, which same body, on the following day, unanimously re-elected him to the Senate, a tribute to his integrity and sincerity and the appreciation of his distinguished services by the people of his State that it would be hard to exaggerate.

My acquaintance with Senator Elkins commenced at the National Republican Convention of 1888, when, in the manner heretofore mentioned (p. 368), he, with others, solicited me to become a candidate for the Presidential nomination. It is needless to say that after such a start my feeling for him was one of the most friendly regard and esteem. He was a big, strong man, intellectually and physically. He had been active in business and had accumulated a fortune large enough to excite the criticism that he represented "the interests." He did have as a result of his experience broad practical views as to what the business interests of the country required, but he was never influenced thereby in a selfish way to the prejudice of anybody else.

He was wise and sound and conservative and yet progressive and patriotic under all circumstances. The Elkins Law, named in his honor, is the most efficient law for the correction of railroad abuses, that has ever been enacted. With a few simple amendments it would have met all require-

ments; but I shall speak of that more particularly in another chapter.

The colleague of Senator Elkins, when I took my seat in the Senate, was a Democrat, Hon. Charles J. Faulkner, a very able man, a fine lawyer, and a most agreeable companion. When his term expired he was succeeded by Hon. Nathan B. Scott, an Ohio man by birth, but a West Virginian for many years prior to the McKinley administration, at the beginning of which he became Commissioner of Internal Revenue by appointment of the President. He had a hard head, a sound mind, a big heart, and was one of the most loyal Republicans I have ever known.

Henry Cabot Lodge was an old acquaintance, whom I first met at the National Republican Convention of 1884. He was probably the most scholarly man in the Senate; almost too scholarly, in fact, for personal comfort.

Bad grammar, whether spoken or written, always annoyed him, and even in the Senate he saw and heard enough of it to keep him much of the time in a disagreeable frame of mind. A split infinitive gave him positive pain, no matter who split it; and the man who commenced a confidential conversation with the phrase "between you and I" unconsciously put himself out of favor before he got started; but he was very able, zealous and influential in all his work.

Senator Hoar was a fine lawyer, a ready debater, a polished orator, and, notwithstanding he had a most genial nature, yet he was a pugnacious fighter. He took an active part in the discussions, and what he said, although likely to be a little waspish, was always strong, incisive and well garbed with the flowers of rhetoric.

Senator W. Murray Crane was his successor. Two men could hardly be more unlike. Senator Crane was a business man with a natural aptitude for politics and the common-sense business part of public affairs. He never participated in debate, but he came nearer knowing all about everything and everybody than anyone I ever knew. Before most of us had commenced to think about how the Senate stood with respect to any closely contested proposition he had ascer-

tained and could tell generally with almost absolute accuracy just what the vote would be when the roll was called. He gained his knowledge without offensive inquisitiveness. He seemed to acquire it intuitively. He was a very useful man. His judgment was sound and much sought after, and his loyalty to his Party and friends was always unquestioned. He was generous, warm hearted, and in every way an agreeable companion and a faithful and helpful friend.

John C. Spooner had served one term in the Senate, and, after an interval of six years, was returning for his second term. He was a man of great ability and a faithful, hard working member, who mastered every question that arose, and who, in an able and helpful way, contributed his full share to the solution of every difficult problem. I think in time he came to have more influence with his colleagues than any other man in the Senate. This was due not only to the ability he displayed in debate and in committee conferences and discussions, but, also, to his modest ways and agreeable manners.

William E. Mason was one of the most agreeable colleagues it was possible to have. He was always in a good humor, always witty and entertaining, and always loyal and faithful to whatever cause he might espouse. As with other men noted for humor his ability was not for a time fully appreciated but all soon learned that he had a strong intellectual force and great aptitude for public debate. I enjoyed exceedingly my association with him and shall always have of him the most pleasant recollections. I speak of his colleague, Senator Cullom, in another place.

Senators Dolliver, Depew and Beveridge were all great orators, but they were more than that. They were close and logical reasoners and by their entertaining speeches exercised great powers of persuasion with respect to all the debates in which they participated.

Knute Nelson of Minnesota was a sturdy, rugged type, who personified in all he did sincerity and uprightness of character and purpose.

Cushman K. Davis was Chairman of the Committee on Foreign Relations. He was one of the most learned men

in the Senate. He had an agreeable voice, a logical mind and was always both entertaining and instructive in debate.

John M. Thurston of Nebraska was a national character before he became Senator. He had long held a prominent place in the councils of the Republican Party. He had presided over the National Republican Convention of 1888, and was an unusually popular campaign orator. He had championed the cause of Republicanism over and over again in almost every Northern State. He took high rank from the start as a man of ability and a Senator of influence.

One of the men to whom I became particularly attached was Jacob H. Gallinger of New Hampshire. He was modest and unassuming, yet always able and ready and forceful and influential. Every Senator knew that he could absolutely depend upon any report or any statement made by him. My relations with him were very cordial throughout my service.

His colleague, William E. Chandler, was one of the keenest and brightest men I have ever known. I had a most friendly regard for him because of his active and efficient co-operation in the Cuban intervention and in the solution of the questions resulting therefrom.

Morgan G. Bulkeley of Connecticut was a gallant soldier of the Civil War, and before he came to the Senate had been Governor of his State. He was a plain, unpretentious man, but a real hero, who will always be held by me in grateful and even affectionate regard for the brave and unflinching way he stood up for a square deal for the Brownsville soldiers. He made a very able speech in their behalf.

My most immediate friend for some years was Senator John Kean of New Jersey; my seat-mate, if I may use that expression with respect to a man who happened to occupy a seat adjoining me. He never addressed the Senate in formal speech, but sometimes in colloquies. He was always punctual and faithful in Committee work, as well as ever alert and efficient in watching legislation to see that nothing improper was enacted. He and Senator Cockrell were known as the two "watch dogs."

I knew Russell A. Alger while he was Governor of Michigan, and later while he was Secretary of War. He had won

his stars as a Cavalry leader in the Civil War and was a large hearted, whole souled man, who was entitled to more credit than he received for his part in the Spanish-American War; or rather he was unjustly criticised on account of many things that went wrong for which he had no responsibility. Some one wittily said of him that his experience illustrated the difference between being Secretary of War and Secretary of *a* War. He enjoyed the friendship and esteem of all who knew him.

Julius Caesar Burrows had for years ably represented the State of Michigan in the House and in the Senate. He had made a good record for efficient services and as a campaign orator of unusual ability.

William Alden Smith had been for a long time a personal and political friend. He was an uncompromising Republican and a very able man, also in the true sense of the word a self-made man.

Senator Quay, Senator Penrose and Senator Platt of New York were real politicians of the kind commonly called "bosses" by good people; but they were also statesmen of rare good judgment and men of high character—better than the character of most of those who maligned them.

Quay was succeeded by Philander C. Knox. He was a scholarly man and a good lawyer. He had been Attorney General under both McKinley and Roosevelt and had made a fine impression upon all with whom he came in contact. He was an efficient and wise legislator.

And so I might go on to specially mention others, particularly Teller and Wolcott of Colorado, Platt of Connecticut, Flint and Bard of California, McCumber, Hansbrough, Gamble and Kittredge of the Dakotas, Heyburn of Idaho, Hopkins of Illinois, Cummins of Iowa, Hemenway of Indiana, Long of Kansas, McComas of Maryland, Carter of Montana, Clapp of Minnesota, Warner of Missouri, Millard and Burkett of Nebraska, Nixon of Nevada, Burnham of New Hampshire, Dryden and Briggs of New Jersey, Fulton of Oregon, Wetmore of Rhode Island, Sutherland of Utah, Warren and Clark of Wyoming, Quarles and La Follette of Wisconsin and Dillingham of Vermont, with still others; and it is hard

to refrain from doing so; for, while not always agreeing with all of them, yet it would be a labor of love to pay fitting tribute to the virtues of each; but while it would be thus agreeable, it is not necessary. Every name mentioned was then and long will be as familiar to the American people as a household word.

It is not my purpose in mentioning them to make them better known but only to show the character of men with whom it was my fortune to be so associated.

I have spoken, however, only of Republican members. There were many Democratic members whom it is pleasing to recall; among them John T. Morgan and E. W. Pettus of Alabama; James K. Jones and Albert S. Berry of Arkansas; George Gray of Delaware; Augustus O. Bacon and A. S. Clay of Georgia; David Turpie of Indiana; William Lindsay and Joseph S. C. Blackburn of Kentucky; Samuel D. McEnery of Louisiana; Arthur P. Gorman and Isidor Rayner of Maryland; H. D. Money and A. J. McLaurin of Mississippi; Stephen R. Mallory and James P. Taliaferro of Florida; Francis M. Cockrell, W. J. Stone and George G. Vest of Missouri; Lee S. Overman and F. M. Simmons of North Carolina; Benjamin R. Tillman of South Carolina; William B. Bate, Edward W. Carmack and James B. Frazier of Tennessee; Roger Q. Mills, Horace Chilton, and later, Joseph W. Bailey and Charles A. Culberson of Texas; and John W. Daniel and Thomas S. Martin of Virginia.

These were all able, patriotic and highly honorable men. They had differing characteristics, but all possessed the essential qualities of true manliness, and were sincerely devoted and zealous in a faithful discharge of their duties.

It was my fortune to have some sharp colloquies and debates with some of them, but as the weeks and months and years passed we came to know each other better, when our mutual regard ripened into a warm, personal friendship, which I recall today with the most genuine pleasure.

My official association was not, of course, confined to the Senate. Necessarily it extended to all the principal officials in the different Departments of the Government, but particularly to the House of Representatives, where, in time, I

came to have a large number of warm personal friends, in addition to the members from Ohio—too many to fully enumerate them, much less specifically mention any, except only the three Speakers who served in that office while I was a member of the Senate.

They were, first, Mr. Reed, of whom in another connection I have already sufficiently spoken.

He was succeeded by General David B. Henderson of Iowa, a gallant soldier, who was mustered out because of the loss of a leg in battle during the second year of the War; the next year he raised a regiment and returned to the field at the head of it as its Colonel and continued there until the surrender at Appomattox. He was a brave, fearless man in peace as well as in war, and presided over the deliberations of the House with energy, firmness and satisfaction to all concerned.

He was succeeded by Joseph G. Cannon; "Uncle Joe," as he was popularly called. He had served in the House seven terms before I entered the Senate. He was one of the old and he was justly one of the most influential members; not only with members of the House, but also with members of the Senate.

He was an uncompromising Republican of the old school. He believed in a protective tariff that would protect; an honest ballot and a fair count; and in all the other basic principles and ideas and policies of the Republican Party and was never afraid to say so.

In scholarly attainments he was not the equal of Mr. Reed, and as a brilliant statesman he was outranked by Mr. Blaine; but as a practical Legislator and as a Speaker of executive ability, thoroughly understanding the Rules of the House, and how to successfully govern that great body and make it useful and efficient, he was the equal of any of his predecessors since Henry Clay.

He was first elected to the 43d Congress, and has been continued as the Representative of the same district without interruption, except the 52nd Congress and the 63rd Congress; in both instances where he suffered defeat he simply went down with his party.



His re-election last year (1914) was a signal victory, but no more than he richly deserved. He is now advanced in years, and, perhaps, physically less active, but his mind is clear and his judgment apparently only improved by age. Long life and continued honor to the old veteran!

If time and space permitted it would be a pleasure to speak of the virtues and abilities of such members as Boutelle and Littlefield of Maine, McCall, Weeks, Moody, Lawrence and Judge Samuel L. Powers of Massachusetts, James R. Mann, present Minority Leader of the House, and M. B. Madden of Illinois; E. J. Hill of Connecticut, Francis W. Cushman of Washington, Hepburn, Lacey and Cousins of Iowa, John Dalzell, Marlin E. Olmsted, and H. Kirke Porter of Pennsylvania, Richard Bartholdt of Missouri, Robert R. Hitt and Henry S. Boutell of Illinois, Charles B. Landis, James E. Watson and Jesse Overstreet of Indiana, Parker of New Jersey, and Sereno E. Payne, James W. Wadsworth, James S. Sherman, afterward Vice President, and James B. Perkins of New York, and perhaps fifty others of practically equal prominence, distinction and efficiency as Representatives, with all of whom it was my fortune to have cordial and agreeable relations.

I might extend the list to the Democrats of the House, with many of whom I had a most pleasing acquaintanceship. I recall in this connection particularly Champ Clark, the present very able Speaker, Oscar T. Underwood, Henry D. Clayton, W. Bourke Cockran, Francis B. Harrison and George B. McClellan of New York, James D. Richardson of Tennessee, Albert S. Berry, A. O. Stanley and Swagar Sherley of Kentucky, James Hay of Virginia, and many others of equal party standing and influence.

Aside from every other consideration Washington is a beautiful residential city. As the capital of the Nation it is particularly so. With such associations and with duties to perform of such important and dignified character as those which devolved upon all connected with the public service while I was in the Senate time passed quickly and most agreeably.

CHAPTER XXXI.

THE DINGLEY TARIFF LAW—SPANISH-AMERICAN WAR.

MY first legislative work was at the extra session called by President McKinley to meet March 15th, 1897, in assisting to frame the Dingley Tariff law; especially the wool and pottery schedules. Wool growing had long been an important industry in Ohio. It had suffered severely under the Wilson-Gorman Law. The pottery interest at East Liverpool, situated as it was in McKinley's district, had received his special attention, and had grown to large proportions and prosperous conditions. It too had been almost ruined by foreign competition under the Wilson-Gorman law.

There was much opposition to the rates the wool growers and the pottery men respectively desired to secure. In consequence we had a very spirited contest, especially about the wool schedule, not only in the Finance Committee while the bill was there under consideration, but also in the Senate when it was there considered and discussed.

I was very much gratified to be able to render effective help in getting for both these industries the rates they demanded, and was made the recipient of a great many telegrams and letters and oral communications of approval and thanks for the work I had done. The Honorable William Lawrence, President of the National Wool Growers' Association, wired me the "thanks of a million wool growers." The pottery men of New Jersey were as enthusiastic in their commendation as were those of Ohio.

All the while the Tariff Law was under consideration the Cuban question was pressing for attention both in the Foreign Relations Committee, of which I was a member, and, also, on the floor of the Senate. Cushman K. Davis was Chairman of the Committee on Foreign Relations; and the

members of the Committee were, on the Republican side, William P. Frye of Maine, Shelby M. Cullom of Illinois, Henry C. Lodge of Massachusetts, Edward O. Wolcott of Colorado, Clarence D. Clark of Wyoming, and myself; while on the Democratic side the members were John T. Morgan of Alabama, George Gray of Delaware, Roger Q. Mills of Texas, John W. Daniel of Virginia and David Turpie of Indiana.

MY MAIDEN SPEECH IN THE SENATE.

These were all able men, most of them had been members of the committee since before the Cuban controversy had arisen. They were all thoroughly familiar with the whole trouble from its inception. When I was assigned to duty as one of their colleagues on the committee there was much accumulated official literature for me to familiarize myself with to enable me to catch up with them. To do this, and to respond to the many calls and demands upon my time and attention on account of the tariff bill and other legislation pending was a very laborious work. I had no idle moments.

It is usual for one entering the Senate, even if disposed to participate in the debates, to postpone doing so until he becomes thoroughly well acquainted not only with the questions to be discussed but also with his colleagues and the general situation.

I had this thought in mind and was not expecting until some time later to take part in any public discussion, when, rather unexpectedly I was, on the 19th day of May, 1897, drawn into a debate with the result that I made then what may be called my "maiden" speech in the Senate. A resolution had been offered by Senator Morgan of Alabama, which, among other things, recognized the rebels in Cuba as belligerents, and, declaring that we were neutrals, accorded them belligerent rights.

A motion had been made to refer this resolution to the Committee on Foreign Relations. I supported this motion but in doing so took occasion to advocate the resolution on

its merits. In this behalf I cited facts that had been officially established by the reports that had been made to the State Department by our Consular officials in Cuba, and by official communications that had been sent to our Committee, from which it appeared that there was within the definition of International Law a state of war in that island; and that, while a recognition of belligerency would give the Spaniards a right to stop our merchantmen on the high seas for examination as to whether they were carrying contraband goods, which was one of the objections to recognition that was urged, yet, that was a matter of slight importance,* compared with the fact that it would, at least theoretically, put the war on a civilized plane; and this was important, since without recognition as belligerents the forces in arms against the Spanish Government when captured might be mistreated in all kinds of harsh ways, for which there was no remedy, because, without recognition, their attitude was that of outlaws and rebels against the established authority. There were hundreds of Americans enlisted among the Cubans and there was no other way to save them, when within Spanish power, from liability to this harsh treatment and secure to them the rights and privileges of soldiers captured in honorable warfare.

Some twenty or thirty Republican Senators, unmoved by such conditions, constituted themselves the special guardians of the peace and the deputized protectors of the business of the country. They answered all mention of such facts with talk about Americans staying at home and attending to

* Submarines were then unknown, but their use cannot change the rules of international law applicable, according to which in cases where a belligerent had a right to sink a ship the non-combatants on board must be first safely removed, not because that *could* be done, but because it *should* be done, to meet the dictates of humanity, which are the basis of all the rules of international law, and always will be, for which reason, while war legislates in the sense that new agencies make new conditions and new rules to meet such requirements, yet the basic principle that governs in the making of all such new rules are and always must be as always heretofore what humanity prescribes. Hence if submarines cannot remove non-combatants before sinking their ship they must not sink it. To hold otherwise is inhuman and in violation of the foundation principles of all law and, therefore, a practice that will never be approved by the civilized peoples of the earth.

their own business, and with sneers about "jingoism"; they especially frowned upon everything in the nature of an expression of sympathy with the revolting Cubans; particularly so, if it was in the form of a practical suggestion of recognition or intervention.

Of course, these gentlemen did not like my speech; and some of them, particularly a few who were unable to talk any other place, said some unkind things about it in the cloak rooms, but, nevertheless, it was well received by a majority of the Senators and by the country generally, and was highly spoken of by Senator Hoar and others in the debates that followed.

INTERVENTION IN CUBA.

I had occasion two or three other times to speak on the same general subject. In all these speeches I defended and justified the Cuban side of the struggle, criticised the tyrannous rule of Spain and characterized the practices to which she was resorting as brutal, barbarous and uncivilized, and pointed out that the time would come, sooner or later, when the United States would be compelled to either abandon the Monroe Doctrine and allow other powers to intervene to establish law and order or do it ourselves; that while our national duty required us to look beyond mere selfish business considerations, yet these, too, were of commanding importance, requiring us as they did to protect our own commercial interests, which were seriously prejudiced by the lawless conditions prevailing.

No definite action had yet been taken, when, on the 15th day of February, 1898, the battleship Maine was destroyed in Havana Harbor, and two hundred and sixty-six American officers and sailors lost their lives. Whether we would have been able to avoid war with Spain on account of Cuba had it not been for the destruction of the Maine is mere speculation. I think sooner or later we would have had war anyhow, but bad conditions had continued so long, and they had become so intolerably bad that when this great tragedy occurred, and investigation confirmed the belief

that our ship, there on a friendly mission, had been foully dealt with, public sentiment was so aroused that it was impossible longer to delay positive action to put an end to the trouble.

Just what that action should be was hard to decide. While all kinds of speeches were being made and numerous resolutions were being offered, no one came forward with what seemed to me exactly what was needed to meet the requirements of the occasion. The result was that finally, on the 29th day of March, 1898, I introduced the following resolutions:

Be it Resolved, By the Senate and House of Representatives of the United States of America,

1. That the people of the Island of Cuba are, and of right ought to be, free and independent.

2. That the Government of the United States hereby recognizes the Republic of Cuba as the true and lawful government of that island.

3. That the war Spain is waging against Cuba is so destructive to the commercial and property interests of the United States, and so cruel, barbarous, and inhuman in its character as to make it the duty of the United States to demand, and the Government of the United States hereby does demand, that she at once withdraw her land and naval forces from Cuba and Cuban waters.

4. That the President of the United States be, and he hereby is, authorized, empowered and directed to use, if necessary, the entire land and naval forces of the United States to carry these resolutions into effect.

While these resolutions were under consideration in the Committee on Foreign Relations almost every kind of argument was made against a favorable report. Among others, it was claimed that our Navy was utterly unprepared for war. A number of specifications were made in support of this argument. Among others, and one that I have seen repeated a number of times in magazine articles and otherwise since the war, was the claim that our ships were practically without ammunition. I remember a conversation with Vice President Hobart, in which he told me that he had been informed that there wasn't a ship in the American Navy that had as much as a full single round of ammunition for each gun it carried. I remember telling him that I was

then on my way to a meeting of the Foreign Relations Committee, where my resolutions were under consideration, and that I should bring the story he repeated to me to the attention of the Committee with a view to having such steps taken as would either verify or refute it.

I communicated all this to the Committee, which thereupon sent for Commander R. B. Bradford, at that time Chief of the Bureau of Equipment, Navy Department, who informed the Committee that there was no truth whatever in the story; that, on the contrary, every ship in commission was required to carry at least fifty rounds of ammunition for each gun on board, and that there wasn't a ship in commission at that time that was not supplied with at least a hundred rounds of ammunition for every gun it carried.

Another story circulated for the same purpose and one that found expression in speeches made in the House of Representatives was that the Republic of Cuba had issued four hundred millions of bonds that would be validated by the recognition of the Republic of Cuba, and that on this account the men behind the movement for recognition would realize four hundred millions of dollars.

The report of the Committee on Foreign Relations on affairs in Cuba, 1898, will show to anyone taking the trouble to look at it that by incontestable proof it was established that there was no truth whatever in this story—that the total amount of bonded obligations that had been issued by the Republic of Cuba was \$122,400, and all these obligations had been issued legitimately and for purposes to which no just exception could be taken.

My resolutions were earnestly opposed, but they passed the Senate by a vote of 67 to 21. In the House they were amended by striking out the second, recognizing the Republic of Cuba, to which I agreed in conference, because I did not think it vital, and in order that speedy and effective progress might be made. With the exception of the second, all my resolutions were, therefore, finally adopted by both Houses, and thus it was that our intervention in Cuba and the Spanish-American War that followed were based on the resolutions I offered.

In entertaining the opinion by which I was governed that the Government known as the Republic of Cuba was entitled to recognition, I was but in harmony not only with the majority of my colleagues, and an overwhelming majority of the American people, but also with Senator Sherman, who was at that time Secretary of State, and who, in February, 1896, speaking in the Senate, had said on this point:

The objection has been made, not in debate here, but in the public press, that the Cubans have no organized government; that they have no local habitation and name; that they have no legislative powers; that there is nobody elected to make laws. This is absolutely untrue. Here in this little pamphlet are the proceedings of the government of Cuba, and of the people of Cuba in organizing the government. Here is a statement of the growth of the revolution, of the battles and campaigns, and cotemporaneous with these movements the preliminary organization of local self government as constituted.

Sir, much to my surprise, because I took up the general idea that those people, in the first instance, were merely a band of discontents, having no organization, with whom we could not deal, it is shown by this official document, communicated to the Secretary of State, that they have gone through all the formulæ of self government as fully and completely as the people of the United States did at the beginning of the Revolution.

This little document shows the organization of the Legislature, the military organization, the election of a President, M. Cisneros, a man of high character, of conceded ability, a man of property and standing, who also, I believe, took a prominent active part in the revolution of 1868 to 1878, besides being eminent in civil life.

Intervening as we did, according to all the rules and requirements of international law applicable to such a case, such a Government was entitled to recognition.

After reading further from Mr. Sherman, I said:

The part to which I wanted to call attention, particularly, was a statement made by Mr. Sherman two years ago in the Senate that he had been surprised, as I was surprised, when he came to investigate, to find that they had a government thoroughly organized and in successful operation. If that was true two years ago, and unquestionably it was, and if it be true, as it unquestionably is, that from that day until this that government, with its army, has withstood the combined assaults of Spain upon it, it is a government which we have a right to recognize, according to all the principles of international law, for it is

not only standing as it then stood in defiance of the power of Spain, but now it can be said, as it was not said and could not be said then, that Spain has ceased to be attended in her efforts to conquer those people with any reasonable hope or expectation of success. That is said; it is said by the President of the United States in the message which he sent us.

It was because two years ago the truth was, as Mr. Sherman stated it in the speech from which I have read, and because from that day until this that truth has been made more and more strong, that I felt in dealing with this question at this time we had a right to recognize that government, and that it was our duty to recognize that government. . . .

I thought if we recognized the independence of the people of Cuba, as we do in the first paragraph, and I thought we were entitled to do it, according to the principles of International Law applicable, we thereby at once changed the legal status of the people of Cuba from that of subjects of Spain to inhabitants of that Island. That was highly important if we were to have war, for when we make war on Spain we make war on all her subjects everywhere. I am sure I do not want to make war on the Cubans, even technically.

In other words, the recognition of the Republic of Cuba as the true and lawful Government of that island was not a proposition brought forward in a spirit of jingoism, as charged by the representatives of the anti-war spirit in the Senate and in the press of the country, but a sound and valid conclusion that had the approval of so conservative an official as Senator Sherman, based on official information and documents, which no one could successfully contradict or challenge.

In the way indicated the second of the resolutions offered by me was omitted, but a fourth resolution offered by Senator Teller, disclaiming intention to annex Cuba to the United States, and declaring that, on the contrary, it was our purpose to leave her free and independent, was added, so that as finally adopted the Resolutions of Intervention, omitting a preamble of whereases adopted at the suggestion of the President, stood as follows:

"First. That the people of the Island of Cuba are, and of right ought to be, free and independent.

"Second. That it is the duty of the United States to demand, and the Government of the United States does hereby demand, that the Government of Spain at once relinquish its authority and government

in the Island of Cuba and withdraw its land and naval forces from Cuba and Cuban waters.

"Third. That the President of the United States, be, and he hereby is, directed and empowered to use the entire land and naval forces of the United States, and to call into the actual service of the United States the militia of the several States, to such extent as may be necessary to carry these resolutions into effect.

"Fourth. That the United States hereby disclaims any disposition or intention to exercise sovereignty, jurisdiction or control over said island, except for the pacification thereof, and asserts its determination, when that is accomplished, to leave the government and control of the island to its people."

By successive steps, with which all acquainted with the history of that time are familiar, we quickly reached the point where war followed.

A few days later I reviewed the whole subject in an article published in the *Forum*, which I incorporate here because of its historic character, and because it shows with what kind of light we acted, by what arguments and facts and by what kind of unselfish considerations we were influenced; and because it also shows that to have done less than we did would have been to fall below the requirements of our platform pledge, the Monroe Doctrine, the dictates of humanity and our own national interests.

I have always recalled with gratification, and never more so than now, that there were enough wise, patriotic and courageous men in the American Congress at that time to save us from the alternative, pusillanimous course.

It might be better to show all this by quoting from the debates, for although somewhat heated, yet they showed the temper of the hour better, perhaps, than anything else that can now be cited, but that would require too much space, hence I substitute the *Forum* article:

OUR WAR WITH SPAIN; ITS JUSTICE AND NECESSITY

(From *The Forum*, June, 1898)

BY

HON. J. B. FORAKER

The United States and Spain are at war with each other. The fact is deplorable; and who is to blame for it is an important question. This question cannot be properly answered without a more extended review

of the relations of Spain and the United States to Cuba, and of the character of the war which Spain has been waging there, than can be given in a magazine article. Enough may be said, however, to indicate all this sufficiently for present purposes.

The Island of Cuba has belonged to Spain, with the right to determine its government. It was the duty of Spain, however, to provide a just government, and the right of the Cubans to seek their independence, whether the government provided by Spain was just or unjust. People have a right to be independent and to govern themselves if they so desire; and it is no answer to say that they are already well governed. But when they are unjustly governed and grievously oppressed this right is accentuated, and their struggle for freedom and self-government naturally and properly commands sympathy as well as respect. Such would be the views of the United States with regard to any case, but especially so with respect to Cuba. That island lies at our door. It belongs to the Western Hemisphere. It is a part of the American system. The Monroe Doctrine covers and applies to it. On this account no other nation would be allowed by us to interpose in its affairs. England, France, Germany and the other powers so understand. The result is that, whatever responsibility may arise for other nations in respect to the progress of events in Cuba, it is all our own. Our relation is special, and our duty is special. With these premises in mind, consider what has happened in Cuba.

The government of the Island by Spain has been, for the last fifty years, of the most arbitrary, unjust, oppressive, and inefficient character. The inhabitants have been practically denied all voice and representation in their affairs; their taxes have been out of all proportion to their ability to pay; and they have been allowed no substantial returns therefor. Educational facilities have been grossly inadequate; there have been no public improvements, not even ordinary highways, scarcely more than a pretense of the most ordinary sanitation, and no sufficient protection to either life or property; and yet the revenues exacted in recent years have amounted to about \$25,000,000 to \$28,000,000 annually. When it is recalled that the total population of the Island, including all classes and nationalities, Cubans, Spaniards, Negroes, together with Americans, Europeans, and other foreigners, is but one and one-half millions, most of them very poor, it will be seen how enormously disproportionate the burden is; but it is not until the details of the system of taxation enforced are considered that its insufferable character is made fully manifest.

In addition to heavy taxation upon all classes of real and personal property, the inhabitants are subjected to special taxes and license fees of every character and description. They are taxed upon each window, upon each pane of glass in each window, upon each chimney, and upon each door. Every note, check, bill, draft, receipt, deed, mortgage, or other paper-writing, is taxed; and so is every kind of occupation, privilege, right, franchise, and business transaction, even to the entering of a name upon a hotel register. All appeals for relief have been denied; and instead of showing mercy and help, Spain has grown steadily more heartless, indifferent, and exacting. Her penal laws have been enforced with a cruelty that can scarcely be exaggerated. Executions, banishments, imprisonments, fines, and forfeitures have been appallingly

frequent and terrifying in character. Our fathers rebelled for just cause in 1776; the Cubans have a thousand times better cause than they had.

In addition, therefore, to the inherent right of independence, the Cuban struggle is a rebellion against tyranny, oppression, robbery, and wrong greater than has ever been endured by any people capable of resistance, and of such a nature as to command the profound sympathy of all who love justice and liberty. It is impossible for any fair and properly informed mind to have the slightest sympathy with Spain in her effort to subdue the insurrection, no matter how fairly she may conduct the war in that behalf.

But her wretched government of the Island was but a fitting prelude to the atrocious war that has followed. It has from the beginning been marked with unusual waste, destruction, savagery, and disregard of the rules of civilized warfare; but the climax in this chapter of wickedness was reached when the policy of "reconcentration" was entered upon. The President, in his annual message of December 6, 1897, justly characterized it as a policy of extermination. Such it was; and such it was intended to be. The order inaugurating this policy was promulgated by General Weyler on February 16, 1897; but it had been doubtless previously approved—as it was subsequently and repeatedly—by the Spanish Government. It required the *pacíficos* to forsake their homes, and the peaceful pursuits whereby they were supporting themselves, and be concentrated in the outskirts of the cities, towns and villages, where men, women, and children were huddled together under military guard, thousands in a place, with a monstrous inadequacy of food, clothing, shelter, and sanitary conditions. The evident purpose was the natural result. In one year more than two hundred thousand of the victims perished, and more than two hundred thousand others were brought so near to death that most of them will not recover.

The immeasurable inhumanity of this proceeding is not fully appreciated until it is remembered that these people, who were thus deliberately tortured to death, were the subjects of Spain,—not one of them had ever raised a hand against her,—who, whatever their sympathies may have been, remained loyal to the Crown, and were entitled to its protection. They were not insurgents, but *pacíficos*; not enemies, but citizens; not a disturbing element, but a quiet, peaceful, law-abiding, and self-supporting peasantry, who had done no wrong to anybody. In all the history of the world there is nothing that approaches their treatment in unprovoked fiendishness and sickening horror. Day after day, for week after week and month after month, the awful story of anguish, misery, and death, with its shocking details, was told to our Government by our faithful Consular officials in Cuba. When that correspondence is published, and all the facts are made known, it will excite the wonder of Christendom that we should have endured such conditions so long and so patiently.

There are other facts to be taken into account in judging the course and final action of the United States. When the war was commenced there were many American citizens residing in Cuba, and engaged in business there. They owned more than fifty millions' worth of property, all of which has been practically destroyed without fault on their part. Many of them have been arrested, imprisoned, and subjected to

gross hardships and indignities, and some of them, like Dr. Ruiz, have been brutally murdered, all in violation of treaty rights; and, although thereunto duly requested, Spain has evaded and denied every demand for reparation, or even apology, whether for property, liberty, or life.

When the war commenced we had a trade with Cuba amounting to about \$100,000,000 annually. This trade has been destroyed.

The American people naturally sympathize with all who struggle for liberty and independence, but especially with those who are of this hemisphere and our immediate neighbors. The struggle of the Cubans has been so heroic, and against such odds and wrongs, that it has excited the greatest interest and admiration. It has also produced corresponding disquiet among our people, and has made necessary a constant, heavy expense, amounting to several millions of dollars in the aggregate, in order to police our coasts and, in the interest of Spain, enforce our neutrality laws. It would be unreasonable to expect us to submit indefinitely to such burdens and to such injuries to our citizens and their business. We had a right, therefore, to seek to bring about a termination of the struggle. We were an interested party. Our interest was second only to that of Spain. Therefore, on April 6, 1896, we tendered our friendly offices to Spain as a mediator. She rejected them, and the war continued. This tender was renewed by President McKinley, and with the same result.

At length Canovas was assassinated and Sagasta came into power. The latter recognized our interest and our right to relief. He also recognized and acknowledged that the policy of Spain should be reversed. He accordingly promised to institute all proper reforms, both in the prosecution of the war and in the civil government of the Island, and asked that he be given a reasonable time in which to carry his reforms into effect. It was accorded him but there was no reform, or any change for the better. On the contrary, the cause of Spain grew day by day more helpless and desperate, until all reasonable hope or expectation of success was gone; while the cause of the insurgents correspondingly improved. Autonomy was a failure, starvation went on, waste and desolation continued, and all to no purpose.

It became difficult for us to maintain friendly relations with Spain. Finally, to relieve the tension and bring about a better feeling, the "Maine" was sent to Havana, and Spain was invited to send one of her ships to New York. When the "Maine" reached Havana she was taken in charge by a Spanish official, the Harbor Pilot, and by him stationed at a place where, without warning, she, with two hundred and sixty-six of her officers and crew, was blown up and destroyed by a submarine mine. Submarine mines are acknowledged governmental implements of war. They are not at any time handled by private individuals; and at the time and place in question, it was a crime punishable by death for any person to be found even in possession of any kind of an explosive. These considerations make it a very strong *prima facie* case—almost conclusive—that the "Maine" was blown up purposely, and by Spanish officials; for it is manifest, as stated by Gen. Lee in his evidence before the Senate Foreign Relations Committee, that no novice exploded the mine, but a skilled expert who possessed not only all the facts as to its location and mechanism, but the requisite technical knowledge as well.

Spain recognized the case against her, and sought to escape liability. She disavowed the affair, and undertook to prove her innocence. She might have proved that there were no mines in Havana harbor if such had been the fact, for she had full control of all the evidence on the subject. She could have called whom she pleased, but she took no testimony on that point. All her efforts were in one direction—that of showing that the explosion was within the ship, and an accident. Her Naval Board of Inquiry so found. One fact, conclusively established by our Board of Inquiry, destroys this finding. The bottom of the ship was blown upward, and was found bent from beneath into the shape of an inverted V. No such result could have been produced by an explosion from within; this is self-evident. It completely destroys the accident theory, and with it the only defense that Spain has sought to make, or ever can make. In view of this it is wholly immaterial what particular person or persons pressed the button that exploded the mine. The commanding fact remains that our ship and sailors were destroyed by a governmental agency of war, for which Spain was as much responsible as she was for the guns in her forts. It therefore follows that not only the act of destruction, but also the act of placing us in danger without warning, was an act of war, and we would have been justified in opening fire on Morro Castle the moment we found the keel plates on the deck of the ship. But we did not do so. We did what scarcely any other nation would have done. We waited nearly two months for an official report, and then the President politely submitted all these criminating facts to Spain and asked her what she would do about them; not doubting, to use his own language, "that the sense of justice of the Spanish Nation will dictate a course of action suggested by honor and the friendly relations of the two governments."

If there was any definite suggestion in this sentence it was, at the most, a prolonged diplomatic controversy resulting ultimately in an international arbitration; and that was not satisfactory. Hence, it was that at this point patience seemed to be exhausted, and the Congress gave unmistakable evidence that diplomatic negotiations must cease, and some kind of decisive action be taken to end the war, stop starvation, give the Cubans their independence, and suitably avenge the "Maine." Numerous resolutions were introduced, and were referred to appropriate committees. All were given careful consideration; but no action was taken until the President, in his message of April 11, submitted his views and made his recommendations. He traced the course of events in Cuba, gave an account of his negotiations with Spain, told how he had exhausted diplomacy without avail, and, therefore, committed the whole subject to the Congress for such action as it might see fit to take. His recommendation was as follows:

"I ask the Congress to authorize and empower the President to take measures to secure a full and final termination of hostilities between the Government of Spain and the people of Cuba, and to secure in the Island the establishment of a stable government, capable of maintaining order, and of observing its international obligations, insuring peace and tranquillity, and the security of its citizens as well as our own and to use the military and naval forces of the United States as may be necessary for these purposes,"

Upon this presentation of the case, as well as upon all this painful history and these influencing facts, relations, and doctrines, the Congress finally, on April 18, 1898, adopted the following resolutions:

"First. That the people of the Island of Cuba are, and of right ought to be, free and independent.

"Second. That it is the duty of the United States to demand, and the Government of the United States does hereby demand, that the Government of Spain at once relinquish its authority and government in the Island of Cuba and withdraw its land and naval forces from Cuba and Cuban waters.

"Third. That the President of the United States be, and he hereby is, directed and empowered to use the entire land and naval forces of the United States, and to call into the actual service of the United States the militia of the several States, to such extent as may be necessary to carry these resolutions into effect.

"Fourth. That the United States hereby disclaims any disposition or intention to exercise sovereignty, jurisdiction or control over said island, except for the pacification thereof, and asserts its determination, when that is accomplished, to leave the government and control of the island to its people."

Was such action justifiable? In answering this question it is not necessary to discuss what was not done further than may be necessary in order to throw light on the grounds for what was done.

There were many who believed that a declaration of war on account of the "Maine" was the simplest, most justifiable and most logical action to take; but they were overruled.

There were many who thought that the whole subject should be recommitted to the President, as he had recommended, with power to take such measures as he might deem necessary to end the war, and to establish a stable government in the island, using the army and navy therefor if necessary; but they also were overruled.

It was the majority sentiment that (1) there should not be any further diplomatic negotiations; (2) that it was not competent for the Congress to delegate the war-making power to the President, to be used at his discretion in a certain contingency, to-wit, the failure of further negotiations ("measures"); and (3) that the Congress was without power to establish a government in a foreign country for a foreign people, "stable" or otherwise, and that it could not empower the President to do so, and that it would not be good policy to do so, if it could.

For these and other reasons, the President's recommendation in these particulars was not followed; and, instead, the resolutions already quoted were adopted.

On the grounds cited in the preamble—which is an epitomized statement of the whole case—the Congress, by the second and third resolutions adopted, demanded that Spain at once relinquish her authority, and withdraw her land and naval forces from Cuba and Cuban waters, and empowered and directed the President to use the land and naval forces, if necessary, to carry the resolutions into effect.

It will be observed that these resolutions cut off all further negotiations. Their mere passage was the demand. In the event of refusal by Spain to withdraw, they left no room for discretion, The President was

directed and empowered in such case to employ, at once, the army and navy in the enforcement of the demand. The resolutions had the merit of brevity, explicitness, and unquestioned validity. No exercise of any doubtful or indefinite authority or power was provided for. The beginning and ending of the whole matter was the immediate expulsion of the Spaniards from Cuba. The door was shut against all further propositions of mediation or intervention looking to autonomy, or the continued sovereignty of Spain in the Island on any terms. The resolutions meant the absolute and unqualified independence of the Cubans, with the right to establish their own government without let or hindrance from us or anybody else; and they saved us from the perils and responsibilities of establishing a government. That whole subject was left in the hands of the people to whom it belongs. Consistent with all this was the fourth resolution, disclaiming all intentions of acquisition, and the first resolution, declaring that the people are, and of right ought to be, free and independent.

The first resolution was of the highest importance, and was accordingly made the subject of much earnest discussion. The chief insistence of those who opposed it was, however, simply that it declared what was not true. In this behalf they claimed, in all possible forms of speech, that war was still in progress in the Island; that the Spanish army still occupied the fortified cities and all the seaports; and that if the Cubans were already free and independent, it would not be necessary for us to intervene. To all this it was answered that a people could be free and independent, in the international sense, without having exclusive control of all their country; and that the presence of an enemy in the midst of them was not a test. At the close of the Franco-Prussian war the German army occupied Paris; but nobody ever thought of denying that the French people were internationally free and independent on that account. Similarly it was argued that though the people of Cuba had not driven the Spaniards out of the Island, yet they had resisted the Spanish arms successfully, that Spain was no longer attended with a reasonable hope or expectation of success in her effort to regain her lost sovereignty, and that our whole proceeding was based on the theory that Spain, by her misgovernment and bad conduct, had forfeited, not only her sovereignty, but also her right to regain it; for which reason we were proposing to drive her out. The effect of that would be to leave the Cubans free; for, if Spain had lost authority, there was none in the Island, except such as the Cubans might impose upon themselves—all of which was only another way of saying that they were free and independent. It was further insisted that if, according to the requirements of international law in ordinary cases, there was anything lacking to make the Cubans internationally free and independent it was supplied by the resolutions to be passed, because, by those resolutions, intervention was provided for; and that meant the unquestioned freedom and independence of Cuba to all who believed in our success. If Spain should retire on demand, the case was clear; if she remained to fight, the result was the same in practical effect, although for a time postponed; while the legal effect would occur immediately, so far as we were concerned, because we should be compelled to recognize the insurgents as our natural allies and co-operate with them, and we could not do

that, and at the same time continue to treat with them as Spanish subjects.

A further argument was based on the fact that the armed intervention proposed was regarded as of such nature that if Spain refused to abdicate, war would immediately follow, and a declaration to that effect would be necessary, as proved to be the case; but that a declaration of war against Spain would be a declaration of war against all her subjects everywhere. The people of Cuba, including the insurgents, were Spanish subjects in law, and would remain so in our view, as well as that of Spain and the rest of the world, until we recognized their independence. A declaration of war against Spain therefore would be a declaration of war against the Cubans as well as everybody else belonging to Spain; and consequently, as a war measure and as one of the necessities of the case, at least the people of Cuba should be recognized as independent. This view prevailed. It prevailed because it was justified by the facts, and was made necessary as a collateral proposition by the chief proposition of intervention. Independence must go hand in hand with intervention.

For the same reasons, as well as others, the Republic of Cuba should have been recognized as the true and lawful government of the Island. The progress of events will not only make this manifest, but will shortly compel such recognition, practically, if not formally. The chief objection was stated by the President, as follows:

"In case of intervention our conduct would be subject to the approval or disapproval of such government. We would be required to submit to its direction and to assume to it the mere relation of a friendly ally."

A complete answer to this suggestion, in the minds of those who favored such recognition, was found in the fact that, according to all international-law writers, an intervening power never takes orders from anybody, and in the further fact that the whole situation was of such a character as emphatically to negative the idea that the Cuban Republic, or General Gomez, would embarrass us by the assertion of any such right. This is all that need be said upon that point now. In this way the question narrowed itself down to whether or not we were justified, under all the circumstances, in demanding that Spain retire from Cuba, and, upon her refusal, in proceeding to eject her by force of arms.

The general rule established by international law is non-intervention; but the exceptions to this rule have been so often repeated, and on such various grounds, that intervention has become a well recognized right, if not in some instances, an acknowledged obligation.

Prof. Lawrence, in his admirable work on "The Principles of International Law," after discussing the right of intervention on the ground of self-interest, says, with special reference to cruelties on account of religion:

"Should the cruelty be so long-continued and so revolting that the best instincts of human nature are outraged by it, and should an opportunity arise for bringing it to an end and removing its cause without adding fuel to the flame of the contest, there is nothing in the law of nations which will condemn, as a wrongdoer, the state which steps forward and undertakes the necessary intervention. Each case must be judged on its own merits. . . . I have no right to enter my neigh-

bor's garden without his consent; but, if I saw a child of his robbed and ill treated in it by a tramp, I should throw ceremony to the winds, and rush to the rescue without waiting to ask permission." (P. 120.)

In concluding his discussion of the subject, Lawrence says:

"They (nations) should intervene very sparingly, and only on the clearest grounds of justice and necessity; but when they do intervene, they should make it clear to all concerned that their voice must be attended to and their wishes carried out." (P. 135.)

All authorities are to the same general effect.

Applying these rules, the war in Cuba has been of long duration. It is more than three years now since it commenced; and the present is but a resumption and continuation of the ten years' war that ended by the treaty of Zanjón in 1878. The struggle has been attended by unusual cruelties from the beginning; and the one feature of international extermination by starvation of the unoffending non-combatants, to the number of hundreds of thousands, is so inhuman and shocking, and has been now so long continued that, without regard to the commercial and property interests involved, we have "the clearest grounds of justice and necessity" for intervention ever presented.

In the language of Historicus (Letters on Some Questions of International Law.—I), it is a case where intervention is "a high act of policy above and beyond the domain of law"—which is the equivalent of saying that it has the most sacred sanction of law.

We were justified, therefore, in intervening; and it was our duty, when we did intervene, adopting the words above quoted, to make it clear to all concerned that our voice must be attended to and our wishes carried out. The resolutions authorizing our intervention meet all these requirements, and do not go beyond. We could not do less than they propose and do our duty. Under all the circumstances we delayed action longer than we should, and have been less harsh and exacting than we might have been.

Spain lost her sovereignty by her own misrule; and she lost all opportunity to retire with dignity and honor, by obstinately refusing the kindest and most generous offers of mediation and by failing to heed repeated and unmistakable warnings of the inevitable. She had a *legal* right to treat our intervention as an act of war; but she had no *moral* right to do so. She has been in the wrong and at fault from the beginning. The trouble commenced in her own house. She made it a general nuisance, and persisted in so maintaining it long after she had been notified that it had become insufferable. Now, when she has forfeited all the respect of others, and all her rights, and when ejection has become necessary, she resents it as an act of war, and appeals to the world for sympathy. So far she has not received any; and it is to be hoped she will not. But, however that may be, our only course was to meet war with war. It is a justly dreaded necessity, but not without some compensations. The spirit of patriotism that has been aroused will stir the life blood of the nation, quicken human activities, and efface sectional divisions. Whether the struggle be long or short, we shall emerge from it stronger, more united and more respected than ever before.

J. B. FORAKER.

April 28, 1898.

CHAPTER XXXII.

SAMPSON-SCHLEY CONTROVERSY—A BIG GUN FOR CINCINNATI—CUBAN LEGISLATION.

IT IS not within the purpose of these notes to write a history of the Spanish-American War, or to deal with any of its incidents, or any of the questions arising therefrom, except in so far as I may have had a personal relation thereto. The struggle was short, sharp and decisive. Both the Army and the Navy did well according to their respective opportunities, but the brilliant victories at Manila and Santiago caused all to feel that the Navy had done especially well.

It was my good fortune to become well acquainted with Admiral Dewey. I found him such a charming and lovable, modest and unassuming man that it was always a pleasure to know that nobody disputed his right to the first honors that were accorded him.

The controversy between Sampson and Schley always seemed to me as unnecessary as it was unfortunate. It was one of the first quarrels of the war that found its way into the Senate.

There was enough honor and more than enough "to go around," allotting to each a wholesome measure. It was not the fault of Sampson that he was absent when Cervera's fleet came out of the harbor of Santiago.

He was on duty obeying orders, by which he was directed to have a conference with General Shafter at Siboney, eleven miles distant. It was his duty to be where his orders placed him, but nevertheless the fact was that he was there, and not in front of the mouth of Santiago harbor when the battle commenced.

He started to return as quickly as the roar of the guns gave him warning and traveled with all possible speed to the scene of the battle, but unfortunately for him, when the

Spanish fleet came out of the harbor they turned to the right instead of the left, and went at full speed toward the West, our ships engaging and pursuing; and thus the battle continued for forty-three miles, until the Colon, the last of the Spanish fleet, surrendered.

When the New York, Sampson's flagship, arrived the fighting was all over. Schley was in the midst of the battle from the beginning until the end; and Sampson was not in it at all, and no matter how good the excuses, and they were good, they were only excuses; they did not change the facts.

The testimony showed that each Spanish ship suffered more or less injury from shells fired from the Brooklyn, Schley's flagship, and the only American casualties were on that ship; one wounded and one killed.

It was doubtless a great disappointment to Sampson and his champions in the rivalries of navy circles for him to be absent at the critical moment, and this disappointment, chagrin and mortification were intensified by the fact that the honors Sampson doubtless would have been entitled to claim, had he been present, went of right to Schley, who was present and in command from the beginning until the ending of the battle. But this was no excuse for Sampson and his friends undertaking to make unjust claims; and particularly no excuse for denying to Schley and those who fought the battle the credit to which they were entitled.

The controversy was long, bitter and acrimonious, finally resulting in a refusal of the Senate to confirm the President's promotion of Sampson by eight points while giving only six to Schley; and further resulting, three years after the war, in a Court of Inquiry that was conducted more like a prosecution of Schley than an impartial investigation of great historical facts, and which resulted in a finding by two of the members of the Court that Schley was guilty of a number of charges that had been born of the controversy, some of which seemed absolutely malicious, and most of them without any just foundation in fact. Among these charges was one to the effect that at the beginning of the battle Schley had improperly maneuvered his ship and that he had

done so in an effort to run away from the battle. As to all of these charges Admiral Dewey, the President of the Court, made a minority report in which he found in Schley's favor.

The Senate, the House and a majority of all classes of people at once, according to popular expressions, accepted Dewey's report as justified by the testimony and indignantly rejected and repudiated the report of the majority.

Schley appealed to the Secretary of the Navy, but he approved, and so promptly as to indicate a predisposition in favor of the majority finding.

Thus matters rested for the time being.

From the beginning of the controversy I naturally took pains to keep thoroughly informed. I did not know either Sampson or Schley. I had never met either. I had never even seen either of them. I had of both a good opinion because both had good records, and so far as I could see nothing had happened in connection with the battle to detract from either. I was as free from bias or prejudice with respect to the merits of the controversy as any one well could be.

The testimony seemed to me to be overwhelming in Schley's favor, and therefore, when we came to consider the matter in the Senate in executive session, I was outspokenly on the Schley side of the controversy. The views I then expressed in executive session I expressed afterward in public speech.

As a result, when in time I made the acquaintance of Admiral Schley, a personal friendship commenced that continued until his death. I always felt that the finding of the Court of Inquiry was a gross injustice and hoped that something would happen to bring about its correction; but nothing did happen, so far as I had knowledge, until September 25, 1911, when I read the following in the morning paper:

"BLUNDER" AT SANTIAGO BY SCHLEY NOW IS DESCRIBED BY ADMIRAL SAMPSON'S AIDE AS BRILLIANT NAVAL MANEUVER.

Special dispatch to the Enquirer.

NEW YORK, September 24.—The controversy which followed the naval battle of Santiago and resulted in a Court of Inquiry to consider charges

that practically amounted to an accusation of cowardice against Admiral, then Commodore, Winfield S. Schley, has been re-opened in a most surprising way, by the publication of a history of the Spanish-American War, from the pen of Admiral F. E. Chadwick, Commander of the flagship New York, and Admiral William T. Sampson's Chief of Staff at the time of the battle.

There was much criticism on the part of Sampson's supporters of the claim of Admiral Schley for turning his flagship, the Brooklyn, at a critical point of the battle. It was claimed that Schley started to run away from the fight.

Much was made of this point in the controversy that waged between the factions of the Navy.

Now comes Admiral Chadwick and shows by his account of the battle that Schley's course in turning the Brooklyn, instead of being a discreditable act, was in fact a brilliant naval maneuver, for which Schley and Captain Cook should have been given great praise.

Admiral Schley was so bitterly opposed that had it not been for Admiral Dewey's prompt and decisive defense of his action he would have been disgraced.

Inasmuch as Chadwick had been one of the fiercest of Schley's opponents, and one of the most uncompromising of the Sampson advocates, I telegraphed Admiral Schley my congratulations.

In response he sent me the following letter which reached my office in Cincinnati while I was absent. For that reason it did not reach me until the evening of October 3rd. Already in the morning newspapers of that day I had read how, the day before, Admiral Schley had been suddenly stricken with death in West Forty-fourth street, near Fifth Avenue, New York City. In view of these facts the letter I received was probably among the last, if not the very last, he ever wrote. At any rate, when it did reach me it seemed like getting a letter from the dead.

It was as follows:

MEADOW EDGE FARM, MOUNT KISCO, N. Y.
Sept. 26th, 1911.

My dear Senator:—

I appreciate and thank you and yours for your cordial telegram. The change of heart upon Chadwick's part is beyond my comprehension as it was mainly his prompting that set the unfortunate controversy afloat. He was chief among those who were disappointed in having no share in the honors of that July day in 1898, and who sought to fix the fact that if Sampson could not have any part in the glory of the day Schley should not.

TELEPHONE 50-R

MEADOW EDGE FARM,
MOUNT KISCO, N. Y.

My dear Stanton

Sept. 26th, 1911

I appreciate and thank you and
Yours for your cordial telegram; the
change of heart upon Chadwick's part
is beyond my comprehension as it
was mainly his prompting that set
the unfortunate controversy afloat.
He was chief among those who were
disappointed in having no share in
the honors of that July day in
1898 and who sought to fix the
fault that if Sampson could not
have any part in the glory of that
day Schuyler should not!

However what he says now is

a complete return from what he
stated under oath, but he has
Wemy's minority report in toto:

I shall return to Washington
early next week and I hope
he will let me know when you
come to the city:

In the meantime I shall never
forget your friendship and interest
in me:

Mrs. Tuley gave me a special
recommendation to you and yours

Truly Sincerely Yours
W. J. Tuley

Sister
J. R. Jackson
Cincinnati
Ohio

However, what he says now is a complete retreat from what he stated under oath, but sustains Dewey's minority report *in toto*.

I shall return to Washington early next week and I hope you will let me know when you come to the city.

In the meanwhile I shall never forget your friendship and interest in me.

Mrs. Schley joins me in affectionate remembrances to you and yours.

Very sincerely yours,

SENATOR J. B. FORAKER,
Cincinnati, Ohio.

W. S. SCHLEY.

A BIG GUN FOR CINCINNATI.

We found ourselves at the close of the war in possession of not only the territorial acquisitions we annexed, but also in possession of a lot of captured guns and munitions of war. Most of these guns were captured from the Spanish Navy and many of them were distributed by the Secretary of the Navy to different cities throughout the country that made application for them as decorations for parks and other public places.

The Cincinnati *Post* started a movement to secure one for Cincinnati. The result is told in the following telegram to his paper from Mr. Gus J. Karger, at that time the Washington correspondent of the Cincinnati *Post*:

CINCINNATI GETS A TROPHY

CANNON FROM THE SPANISH CRUISER OQUENDO WILL COME TO THE
QUEEN CITY

SECURED WEDNESDAY BY SENATOR FORAKER AND HIS SON—SECRETARY
LONG TOOK ONE, TOO.

From a Staff Correspondent.

WASHINGTON, April 12.—Cincinnati gets a war trophy. Senator Foraker and son, Benson, called on Secretary of the Navy Long shortly after noon today. They asked for a trophy for their home town.

"I can't refuse it to the father of the resolutions that brought on the war," Long courteously replied.

He at once sent an order to Admiral O'Neil, Chief of the Ordnance Department, to give Foraker what he wants.

The cannon Cincinnati gets is 14 centimeter, 5½-inch caliber steel, and 20 feet long. It weighs 5½ tons. It was taken from the Oquendo at Santiago, July 3. Cincinnati gets carriage and shield, too. The gun is now at Norfolk. The order for her will be sent tomorrow.

Foraker also had granted him a bronze gun from Morro Castle, Santiago, for his birthplace, Hillsboro, O. The gun has not yet been selected, but it will be at an early day.

"I haven't any gun for my home town yet," Long told Foraker.

"Permit me to make the application for it," said Foraker.

"With pleasure," said Long. So he asked O'Neil for one for Hingham, Mass. The request was granted.

GUS J. KARGER.

Promptly, in accordance with the Secretary's order, given as above indicated, the gun now standing in Eden Park was shipped to Cincinnati, where it was received April 29, 1899, with great formalities—a parade, a meeting and addresses appropriate for such an occasion. A copy of the bill of lading was published in the daily press of Cincinnati. This recites that the gun was consigned to "Senator J. B. Foraker, Cincinnati, Ohio"; that it was a "14 centimeter Spanish gun with carriage and shield complete"; that the total "weight was 21,300 pounds," and that it was shipped "Free, complimentary to Cincinnati," and that it was further described as follows: "Point, origin—Cadiz, Spain. Destination, Cincinnati via transfer, Santiago, Cuba."

I take pains to insert all this because I was surprised, when recently I had occasion to visit Eden Park, where the gun in this article mentioned as allotted by the Secretary for Cincinnati was placed, to find that there is not a word in the way of a label or any kind of explanation to show where the gun came from or how it got there.

To find out how quickly and how thoroughly "we are forgot," I caused inquiry to be made at the office of the Mayor of the city as to where the gun came from and how it got there, only to learn that they knew nothing about it. I caused similar inquiry to be made of the Director of Public Service and also of the Cincinnati Park Commission, that has immediate charge not only of the parks, but everything in the parks, including this gun, but at no place was anybody found who had any knowledge as to where the gun came from, what its history was or how it had been secured.

Perhaps, when this information reaches the official ears, if it ever does, it may prompt those having authority to do so to suitably label the gun and to record its history somewhere.



THE BIG GUN.

But the war brought us more serious duties than those pertaining to the distribution of captured guns.

CUBAN LEGISLATION.

When it ended we found ourselves confronted by a number of new and vitally important questions. Cuba, Porto Rico and the Philippine archipelago, each presented problems peculiar to itself.

We had pledged to the Cubans a free and independent government, but that did not mean that we would or should be indifferent as to the kind of government they established; nor did it mean that the relations between the two countries should not be clearly defined and properly and permanently established.

I did not very well like the so-called Teller resolution that was added to my resolutions for intervention while they were under consideration in the Senate, but when it was adopted I regarded it, as most people did, as a sacred pledge which we were bound to observe faithfully.

That resolution read as follows:

That the United States hereby disclaims any disposition or intention to exercise sovereignty, jurisdiction or control over said Island, except for the pacification thereof, and asserts its determination, when that is accomplished to leave the government and control of the Island to its people.

It will be noted that according to its terms, our stay in the island could not, without some good excuse, be extended beyond the time when the island was pacified. Whenever that time should arrive it was our duty "to leave the government and the control of the island to its people."

The language of this resolution was so plain and its pledge so positive that there was no room for argument as to what it required us to do.

I was greatly gratified, therefore, by the reports that commenced coming to us from Cuba, soon after the cessation of hostilities, to the effect that everybody was apparently accepting in good faith the results that had

been accomplished, and that law and order were being rapidly re-established everywhere throughout the island.

In other words, the pacification of the island would soon be accomplished and we could retire before new complications arose.

So much had been predicted to the contrary, and that people seemed so inflammable and so accustomed to disorder that this prospect was exceedingly gratifying.

Later the advices were that there were some indications of restlessness and dissatisfaction among the Cubans, as distinguished from the Spaniards, due to indefiniteness as to just when and how they would be allowed to proceed to frame, establish and put into operation a government of their own, and to the fact that in some way the impression was spreading that the property interests of the island desired that our stay should be prolonged until a lot of things could be done. It was said that the island needed sanitation; that it had no highways, railways, bridges, or gas or electric light plants, or water works, and that we ought to remain there until all these could be supplied.

CUBAN FRANCHISES.

As time passed this talk increased and less was heard about giving the people of Cuba an opportunity to establish a government of their own, through which they could exercise sovereignty and do all these things for themselves. It not only seemed hard to get very much information on the subject, but such information as we did get was calculated to excite distrust.

While this state of feeling was prevailing the *Washington Evening Star* of February 10, 1899, published an account of the creation of a new Board, which was to have supervisory charge of the granting of franchises in Cuba and Porto Rico.

So far as Porto Rico was concerned, that was to belong to us, and it was, therefore, competent to do with respect to franchises there whatever we might deem best; but it was different as to Cuba.

The article announced that General Robert P. Kennedy of Ohio had been appointed President of the Board, and gave what purported to be an interview with him, in which he described what the duties of the Board were to be.

The article is not very long, and I insert it in full:

ROOMS OF THE BOARD.

The Board appointed by the President to investigate and report upon taxation, franchises, and concessions in Cuba and Porto Rico is established in the Lemon building. The handsomely equipped suite of rooms they now occupy on the second floor will be vacated to-day, and the Board hereafter will use the third-floor suite, in which the war-investigating commission has been sitting.

Mr. Curtis has not yet reported for duty, but his colleagues, Messrs. Kennedy and Watkins, were busy to-day with a number of clerks, classifying and filing applications for franchises and concessions and receiving personal calls in connection with these matters.

The Board hopes to obtain the services of a competent Spanish-speaking clerk to act as translator, and to complete its force of clerks who will accompany the Board in a few days. The start will be made within a week or ten days.

THE SCOPE OF INQUIRY.

The scope of their inquiry comprehends all matters referred to them by the Secretary of War for investigation and recommendation. Only subjects related to civic administration will be considered, and the Board will not touch upon anything relating to the military. These include questions concerning the judiciary, the assessment and collection of taxes; the granting of patents, the sale or gift of franchises, either local or interprovincial; railway grants, street-car line concessions, electric light and other municipal monopolies.

Upon all these the board will in due time report to the Secretary of War, but they have no power to do more than to formulate recommendations for the guidance of the President and Secretary Alger.

PLANS OF THE BOARD.

General Kennedy, of the Board, gave to a *Star* reporter today the following interview:

"At present we are called the Advisory Board, but I believe that in time some more suitable designation will be found. We are expecting to be joined at once by Mr. Curtis, the new appointee, and then we will organize and perfect the details of our work.

"We are hunting for a Spanish-speaking clerk to act as translator, but we find it hard to accomplish. I don't know how large a force of clerks will accompany us. The start will be made soon—within a week or ten days. We will go direct to Havana in order to avoid the sickly season. Then we will visit every port, large city, and province on the island. We believe that we will be at least a month or six weeks doing this, and afterwards the same time and care will be spent in Porto Rico.

We have nothing to do with the Philippines, as the United States has not yet completed the occupation of those islands.

MANY APPLICATIONS FOR CONCESSIONS.

"Very many applications have been referred to us by Secretary Alger and Assistant Secretary Meiklejohn, and not a few calls have been made by applicants in person. A few requests for grants of franchises and concessions are from American syndicates, but the majority are from corporations already established on the island. Nothing will be done with any of these until we have gone over the ground and carefully looked into the advantages or disadvantages of each."

I felt that the program thus marked out so far as Cuba was concerned was entirely inconsistent with our pledge; in fact, an open and flagrant breach of it; because if we granted franchises of the character specified, and thus authorized and induced the investment of the large amounts of money that would necessarily follow, it would probably postpone for several years, at least, our withdrawal. Accordingly I offered an amendment to the Army bill, which, after a sharp debate and a slight amendment, was adopted on the 3rd day of March, 1899. As adopted it provided that

No property franchises, or concessions of any kind whatever, shall be granted by the United States, or by any other military or other authority whatever in the Island of Cuba during the occupation thereof by the United States.

Mr. Platt, afterward Chairman of the Committee on our Relations with Cuba, opposed its adoption on the ground that it was unnecessary and in the nature of a reflection on the administration.

He was supported in this contention by Senator Morgan of Alabama, and Senator Spooner of Wisconsin, and two or three other Senators, all of whom spoke to the same general effect. Senator Lodge, Senator Hale, Senator Mason and others took my view of the matter.

As showing the purpose of the amendment as expressed in the Senate at the time, and the nature of the debate, I quote therefrom briefly as follows:

MR. PLATT of Connecticut: Mr. President, what is the necessity for this action by Congress? If I believed that there was any disposition

or intention on the part of the Administration, or anybody connected with it, to issue or grant any corporate privileges in Cuba, I would vote for this amendment. But, Mr. President, I do not believe it. Everything that has been done by this Administration and by anyone connected with the Administration from the time we began military occupation in Cuba to this time disproves any insinuation that there is any such intention.

Now, Mr. President, a resolution was sent to the War Department to know whether any corporate privileges or concessions had been granted. The reply to that resolution was that there had been none. There has been an order issued by the War Department to the authorities in Cuba directing that there shall be none granted, and I think I am justified in saying that there is no intention of granting any by the President, by the Secretary of War, by the advisory board, or by any persons in authority in Cuba.

That being the case, we are asked, on the authority of an irresponsible newspaper statement, to gravely pass an act here that no one shall have authority to do that. There would be just as much propriety in putting on at the end of this bill a provision that no officer should squander any of the money which is appropriated in the bill. To pass an amendment of this sort is a direct charge or an insinuation that somebody intends to do it, and therefore I propose to vote against it.

MR. FORAKER: Mr. President, there seems to be an undue sensitiveness about this amendment, and running through all these speeches there is an intimation that something is insinuated which is of a character that will reflect upon somebody by the mere offering of it.

Mr. President, I disclaim any such intention. We have a right, it seems to me, to speak upon such a subject as this without having any improper motive attributed to us. I resent the insinuation that there is any improper motive to be attributed. As a full justification of the action of presenting the amendment I call attention again to the newspaper article that has already been put in the RECORD, and I desire to read very briefly from it.

It will show that this action is not premature, as was said by the Senator from Alabama, and it will show conclusively that those having authority with respect to Cuba have expressed an intention to grant franchises in that island. There is not any question about the truthfulness of this statement. Nobody ever denied anything contained herein. This is only one, as I said a while ago, of a number of statements and a number of interviews. What I shall read in a moment comes from an interview with the president of this advisory board. He states here all the duties of that board, and I do not know where else to learn them. You can not go to any statute and find what are the duties of that board.

There is no statute by which that board is created expressly. There is no statute defining the power of that board. It is a board appointed by the President in the exercise of the power belonging to him while a military occupation is being maintained in these various islands. It is a board not appointed by him with the advice and consent of the Senate. We know of its existence, we know of its power only as the board itself has seen fit to proclaim it. Now, here is what the president of this board says. I submit it is sufficient to show that this legislation

is not premature and not without excuse, if it be at all appropriate legislation.

MR. SPOONER: What is the date of that article?

MR. FORAKER: The 10th day of February. It came out in the paper just about the time, I think, that the answer was made to the resolution which was passed by the Senate asking for information on this subject. I do not remember that the answer to that resolution went any further than simply to say that no franchises have been granted heretofore. I did not know that anybody claimed that any had been.

The question is not as to the past, Mr. President, but it is as to the future. When we find those exercising authority by appointment of the President proclaiming their intention in this regard, it is time for the Senate of the United States, and the Congress of the United States, to express an opinion on the subject, if it have any opinion to express.

Here let me call attention to the fact that we have been invited by the President himself to legislate in regard to this matter. In his Boston speech he announced not only to the Congress of the United States, but to the whole country, that the responsibilities of the war were now to pass to Congress; that it was for Congress to say what should be done in those islands. He shifted from himself all responsibility in regard to them. It seems to me, therefore, if a question arise with respect to any one of those islands and we want to express a policy in regard thereto, it is certainly our right to do so without having somebody impute to us a motive that is offensive.

Now, Mr. President, let me not be diverted from reading here as a justification for the offering of this amendment further from the interview.

"The scope of their inquiry—"

Speaking of this board—

"comprehends all matters referred to them by the Secretary of War for investigation and recommendation. Only subjects related to civic administration."

I call the attention of the Senator from Alabama to that—

"Only subjects related to civic administration will be considered, and the board will not touch upon anything relating to the military. These include questions concerning the judiciary, the assessment and collection of taxes, the granting of patents, the sale or gift of franchises, either local or interprovincial."

Now stop and think, Mr. President, what is meant by an "interprovincial" franchise. It means the granting of a franchise to build a railroad or some other kind of highway, I imagine, across that island; and if so, then I am opposed to the United States entering into any such business in the island of Cuba, where our occupation is to be temporary.

In other words, if that kind of a programme is to be entered upon, it means that the United States will not get out of Cuba in a hundred years.

MR. HALE: : Of course it will not.

MR. FORAKER: And never will get out of Cuba. I hope, for one, to see the United States withdraw from that occupation and let the people of that island establish an independent government of their own, as we have promised, and I hope it can be done at no distant day.

Now, further this interview says:

"At present we are called the advisory board, but I believe that in time some more suitable designation will be found."

"In time." How much time? This year or next year? This is the president of the board who speaks. Is he not one in authority?

"We are expecting—"

Now listen to this—

"We are expecting to be joined at once by Mr. Curtis, the new appointee, and then we will organize and perfect the details of our work. We are hunting for a Spanish-speaking clerk to act as translator, but we find it hard to accomplish. I do not know how large a force of clerks will accompany us."

This is to Cuba. He made that statement before starting to Cuba:

"The start will be made soon—within a week or ten days. We will go direct to Havana in order to avoid the sickly season. Then we will visit every port, large city, and province on the island."

I have read enough to show his declaration as to the power his board is to exercise. Are we not entitled, Mr. President—

MR. MASON: What is the title of the board?

MR. FORAKER: The "advisory board," he says they are called now, but some time in the future he hopes to get some other name which will be more suitable.

MR. STEWART: Who is the president of the board?

MR. FORAKER: The president of the board is Gen. Robert P. Kennedy of Ohio, a man of intelligence, selected by the President to be the presiding officer of this board. Is he not to be presumed to understand the powers which the President wants him to exercise?

MR. PLATT of Connecticut: I am sorry to hear the Senator from Ohio say that the president of that board is a man of intelligence after he reads that statement, if it be true that it is an interview with him.

MR. FORAKER: Well, Mr. President, I do not mean to criticize General Kennedy. I assume that he was speaking according to his instructions, and for that reason I do not think there is anything to justify what the Senator from Connecticut has said. General Kennedy certainly understands, or should understand, what he has been chosen to do.

Now, listen further as to the character of these franchises. He says:

"Very many applications have been referred to us by Secretary Alger and Assistant Secretary Meiklejohn, and not a few calls have been made by applicants in person. A few requests for grants of franchises and concessions are from American syndicates, but the majority are from corporations already established on the island. Nothing will be done with any of these until we have gone over the ground and carefully looked into the advantages or disadvantages of each."

There is an officer of the Government—I suppose he is an officer, and that he has taken an oath, and no doubt is drawing a salary and has all the muniments of office. There is the president of this board telling us that the board at an early day is to start to Cuba and these various islands.

I am told by the Senator from Iowa [MR. GEAR] who sits near me that the board has already gone. I do not know whether that is the case or not, but I have a right to assume, when we read this in the newspapers and see no contradiction of it, that the board is expected to

exercise the character of power here described, and that the board is at an early day to set about doing it.

I desire to protest against it, and I think the effective way of protesting against it is to legislate against it; to legislate that we do not want the granting of any franchises, either interprovincial or otherwise, in the island of Cuba. We want to pacify the island, then recognize a government established by the people of that island, and then bring our troops home; and the quicker we can do it the better I think it will be for us, and the better for the island, too.

MR. LODGE: Mr. President—

MR. FORAKER: Mr. President, one word further, and then I will yield with pleasure to the Senator from Massachusetts.

The Senator from Alabama made a strong point in definition to show that the word "franchise" was so broad that it might prevent the conferring of the elective franchise. I do not know that that is contemplated. But however that may be, all the difficulties suggested by the Senator from Alabama on account of his definition of the word "franchise" can be obviated by putting one word in this amendment, as he will agree with me, and that is by saying "property franchises or concessions." I will ask consent to put in this amendment, before the word "franchises," the word "property." Then it will read "property franchises."

THE VICE PRESIDENT: The amendment of the Senator from Ohio will be modified in the manner suggested by him.

My amendment was adopted by a vote of 47 yeas to 11 nays, and is known in the official orders and judicial decisions in which it was considered as "the Foraker Amendment."

I received many letters from Cuba and elsewhere similar to the following from General James H. Wilson:

HEADQUARTERS
DEPARTMENT OF MATANZAS AND SANTA CLARA
MATANZAS, CUBA

HON. J. B. FORAKER,
United States Senate, Washington, D. C.

December 28, 1899.

My dear Senator:— . . .

I note there is a great outcry in favor of the repeal of the Foraker amendment to the Army Bill. I trust you will stand firm on your measure, because you can rest assured that the purposes which you had in view in passing it will be completely set at naught if it is now repealed. We shall become more and more involved and complicated in Cuba if we open the door which that resolution closes. I hope it will not be opened until the Cubans themselves open it. We do not build schools, reform the judiciary, or the jurisprudence or establish road systems for any one of the States of the Union. We do not grant franchises or exercise any control whatever over the granting of franchises for any of the States within the Union. I trust we will permit nobody to have the

power of doing so for Cuba or for any other country over which we may exercise temporary dominion.

Wishing you a happy and prosperous New Year, I am

Yours faithfully,

JAMES H. WILSON.

My letters were not all commendatory, for it was true, as General Wilson says, that for a time there was a great outcry for the repeal or modification of the amendment. This was due to the fact that the amendment was proving effective—accomplishing its purpose. I received a number that expressed the opinion that it was our duty “to clean up the plague spot and introduce the conveniences of civilization before we left.” These were mostly from people interested, directly or indirectly, in franchises.

I did not receive any, however, that changed my opinion that my amendment was appropriate and necessary.

I make this statement because, in Mr. Coolidge’s Life of Senator O. H. Platt, I find a letter written by him on the 31st day of May, 1901, in which he says that, in a conversation he had with me, I expressed the opinion that it would be better if we could modify my amendment in some respects. I have no recollection of the conversation to which the Senator refers, and I do not know just what I could have said from which he got the understanding he expresses, unless it was that, because of a mistake in printing my amendment, it was broadened, beyond its purpose, to prohibit a grant of property, as well as a grant of political privilege.

As I introduced the amendment it read, as already shown:

“No franchises or concessions of any kind whatever,” etc.

To meet an objection made by Senator Morgan I asked leave to amend by inserting before the word “franchises” the word “property”; thereby restricting the prohibition of the amendment to property franchises, as contra-distinguished from those that had reference to such privileges of citizenship as voting, etc.

The amendment, as thus amended, was adopted, but, instead of printing it in the compilation of the laws of

the session as "no property franchises or concessions," etc., it was printed, "no property, franchises or concessions." The law as thus printed was in some instances held to prohibit any kind of a transfer of property that might come within the definition of a grant. This in several instances led to confusion, embarrassment and inconvenience, and I always felt that it might have been well to have cured it by an amendment to strike out the comma that had been erroneously inserted. I doubtless would have done so had it not been that the provision was temporary, terminating necessarily with our occupation.

Aside from this one technical point, due to an error in revision, not in enactment, I find nothing in my files indicating any change of mind on my part with respect to the necessity for the amendment, the propriety of it or the great value of it, or that it should be in any way modified, unless it would be that a modification might be made that would permit the construction of highways or other public works whereby employment might be given to the idle classes, who, for the want of work, were likely to become mischief-makers.

The following correspondence with General Fitzhugh Lee fairly well covers and presents the whole controversy on that point, about as I recall it. I incorporate it because of its confirmatory as well as interesting character:

WESTMORELAND CLUB, RICHMOND, VA., NOV. 20, 1899.

My dear Senator:—

One remark of yours in our conversation the other day lingers with me,—viz., that if by accident or bad management an exchange of shots took place anywhere between the Cubans and American soldiers, resulting in many of the former falling into ranks again, the country might have a guerrilla war on its hands and our troubles multiply.

You will pardon me when I write, that I think your resolution prohibiting concessions, etc., on the Island of Cuba should be *now* repealed. Not having inside resources, outside capital must be employed for Cuba's development.

Public improvements require labor. The Cubans at work will be much more easily managed than the idle Cubans, who, doing nothing, are waiting for something to turn up.

2nd. The pledged faith of the government—4th sec.: Joint resolution 19th April, 1898, should be as promptly carried out as possible after the

completion of the census. The Spaniards in Cuba have until April to decide whether they are to be Spaniards or Cubans. They number possibly 175,000, out of a population of say 1,200,000—own most of the property, and are doing most of the commercial business, and, must, therefore, remain in Cuba so long as Cuba has a government capable of protecting their life and property. They are annexationists but, of course, keep quiet; comparatively few of them have announced their determination to remain Spanish citizens for reasons that will readily occur to you. Indeed within the last 6 or 8 weeks some six or eight thousand Spaniards have arrived in Cuba from Spain as promising more work for them in the former place.

It is likely most of the Spanish will not vote for members of a Constitutional convention to organize a Cuban republic; or, if they do, that their vote will be of any practical importance; so I see no advantage to be gained by waiting until April, when the hot weather begins again, to see if a few more Spaniards will decide to remain citizens of Spain.

The great mass of workmen in Cuba, yellow and black, want to be let alone. The educated and property holding Cubans and Spaniards want some form of American protectorate. The ex-Cuban officers and soldiers want *Cuba libre*. They are divided into clubs under a half dozen leaders and will fight among themselves on the floor of the convention; each faction preferring U. S. control to being under the jurisdiction of any ring except their own.

3rd. No U. S. soldiers should be withdrawn from Cuba until after the experiment of free government has been tried and failed.

My residence in Cuba for two years as Consul General, and one year as an officer commanding a Department has naturally made me understand the character and temper of the natives, as well as given to me a familiarity with the conditions surrounding them.

It is this which induces me to put in writing what I practically said in our recent interview.

I am very sincerely yours,

FITZHUGH LEE.

I leave for Cuba at end of this month.

F. L.

HON. J. B. FORAKER.

GENERAL FITZHUGH LEE,
Richmond, Va.

Nov. 21, 1899.

My dear General:—

Answering your note of the 20th inst. I appreciate all you say, and the spirit in which you say it, and I agree with you as to all you say, except only as to the repealing of the amendment to the Army Bill prohibiting the granting of franchises by the United States in Cuba. I know this prohibition stands in the way of the immediate inauguration of many needed enterprises which would induce the investment of capital, and give employment to labor, and greatly benefit the Island and its inhabitants. But my idea about the whole subject is that the sooner the United States Government fulfills its pledge to give the people of Cuba a government of their own the better. I think the people of that Island

as capable to undertake the government of themselves now as they will be in ten or twenty years from now; or at least practically so, and perhaps for a much longer period than I have indicated. Their behavior since our intervention has been splendid in every point of view. They have shown intelligence, patience, conservatism, etc. If the United States Government does not now provide for the establishment of an independent government there it may be years before it will do so; and for us to remain in Cuba for years to come, no matter what excuse we give, will make it appear that we are not keeping, but breaking, our pledge; and that we cannot afford.

If we enter upon the granting of franchises for the construction of railroads, street railways, and water works, and electric light companies, gas companies, etc., we will be, in the first place, denying to the Government we should now be establishing what is of the highest importance to it, and at the same time we will be committing ourselves to an indefinite stay; for if we grant franchises, and induce the investment of capital that would follow we will be under every kind of moral, if not every kind of legal obligation to protect the investment by securing the enjoyment of the franchise. This is so patent that when we enter upon such a course it seems to me we would precipitate further distrust, which would inevitably ripen into hostility, and be followed by a clash that would make impossible all our beneficent purposes toward Cuba, and through the appearance of insincerity thus given, discredit the character of our intervention and occupation until now.

My idea, therefore, is to stand by the position we have taken in regard to franchises as one of the great, controlling influences, that will shorten our stay in the island.

Pardon me for inflicting all this on you, but I esteem so highly your services to your country in connection with Cuba, and the patriotic and humanitarian impulses you have with respect thereto that I am anxious to be understood by you, especially upon all points where we may differ as to what should be done.

With sentiments of high regard, I remain

Very truly yours, etc.,
J. B. FORAKER.

WESTMORELAND CLUB, RICHMOND, VA., Nov. 25, 1899.

Thanks for your kind letter, my dear Senator.

You and I are not far apart. *As soon as possible.*

1st. Let U. S. Government carry out pledge to give the people of Cuba a government of their own.

If the experiment fails, the U. S. in the interest of peace, law and order, must guide the Cuban ship of state.

You must not forget the mass of working illiterates want to labor for anybody's money.

The property holding Cubans and Spaniards are annexationists, and the "*Cuba libre*" fellows are the ex-Cuban officers and soldiers, whose purposes will be opposed by a large majority of their own people.

2nd. Repeal your former resolution so that the present restless idle class can be employed, and thus kept away from mischief.

I do not see any reason for an American civil governor to be appointed ad interim for Cuba, and I think the reported plan of Gen. Wood's to replace American troops on the island by Cuban soldiers with American officers entirely impracticable. Soldiers without drill or discipline are valueless. How could such instruction be imparted by officers who do not understand the language of their men; and where is the authority to organize a Cuban army with U. S. officers?

As I wrote you I leave for Havana on the 29th and will be glad to give you such information as you may from time to time desire.

Sincerely yours,

FITZHUGH LEE.

HON. J. B. FORAKER,

U. S. Senate,

Washington, D. C.

THE PLATT AMENDMENT.

At the beginning of the first session of the 56th Congress, December, 1899, the Senate created three new permanent committees; one to take charge of our relations with Cuba; another for the Philippines; and a third for the Pacific Islands and Porto Rico. Senator O. H. Platt was made Chairman of the Committee on "Our Relations with Cuba."

In Coolidge's Life of the Senator he states and clearly shows that until the Senator was made Chairman of this committee he had not given any special consideration to Cuba; that while he was greatly interested in the work to be done in the Philippines, he was loath to undertake to solve the Cuban problem, but that when he found himself at the head of the committee, and especially responsible as his chairmanship made him, he set about the work of carefully studying the whole situation, not only by familiarizing himself with such literature as there was on the subject, but also by visiting the island and making a personal investigation of physical and political conditions existing there; that he recognized that the Teller resolution required us to give the people of Cuba an opportunity, as soon as circumstances would properly admit of it, to establish a government of their own, and that when such a government should be put into operation it would be our duty to retire.

At the same time he recognized that under the obligations assumed in the Treaty of Peace and those growing generally out of the natural relations of the two countries, there

must be found some way in which to determine what should be their mutual relations, and that this must precede a recognition of their independence and our retirement from the island. In time it became manifest that as soon as pacification could be safely announced as an accomplished fact the Cuban people should be officially called upon to select delegates to a convention called for the purpose of framing a Constitution and establishing an independent government, and that it should be set forth in the call that the convention should also consider and determine and proclaim as one of the provisions of the Constitution what the relations should be between the two countries, and that if the relations so proclaimed were acceptable to the United States, we should so signify by terminating our occupation of the island.

In accordance with this program a convention was called. It assembled and was in session at Havana for some weeks, during which time much was done to frame an organic law, create a government, determine its various departments and the respective powers of the same, but practically nothing to define what should be the relations between the two countries.

It soon became apparent that probably nothing of this kind would be done unless we could find some proper way in which to force the convention to act.

As a result, Senator Platt, as Chairman of the committee, reported and the Senate adopted what is known as the Platt Amendment, so called because it was offered by him, to the Army Appropriation Bill.

This has been justly extolled as a wise piece of legislation. Because of its important and far-reaching consequences I insert it in full:

THE PLATT AMENDMENT.

That in fulfillment of the declaration contained in the joint resolution approved April 20, 1898, entitled: "For the recognition of the independence of the people of Cuba, demanding that the government of Spain relinquish its authority and government in the island of Cuba, and Cuban waters, and directing the President of the United States to use the land and naval forces of the United States to carry these resolutions into effect," the President is hereby authorized to "leave the government and control of the Island of Cuba to its people" so soon as a government shall have been established in said island under a constitution which,

either as a part thereof or in an ordinance appended thereto, shall define the future relations of the United States with Cuba, substantially as follows:

I.

That the Government of Cuba shall never enter into any treaty or other compact with any foreign power or powers which will impair or tend to impair the independence of Cuba, nor in any manner authorize or permit any foreign power or powers to obtain by colonization or for military or naval purposes or otherwise, lodgment in or control over any portion of said island.

II.

That said Government shall not assume or contract any public debt, to pay the interest upon which, and to make reasonable sinking fund provision for the ultimate discharge of which, the ordinary revenues of the island, after defraying the current expenses of Government shall be inadequate.

III.

That the Government of Cuba consents that the United States may exercise the right to intervene for the preservation of Cuban independence, the maintenance of a Government adequate for the protection of life, property and individual liberty, and for discharging the obligations with respect to Cuba imposed by the treaty of Paris on the United States, now to be assumed and undertaken by the Government of Cuba.

IV.

That all acts of the United States in Cuba during its military occupancy thereof are ratified and validated, and all lawful rights acquired thereunder shall be maintained and protected.

V.

That the Government of Cuba will execute, and as far as necessary extend, the plans already devised, or other plans to be mutually agreed upon for the sanitation of the cities of the island, to the end that a recurrence of epidemic and infectious diseases may be prevented, thereby assuring protection to the people and commerce of Cuba, as well as to the commerce of the southern ports of the United States and the people residing therein.

VI.

That the Isle of Pines shall be omitted from the proposed constitutional boundaries of Cuba, the title thereto being left to future adjustment by treaty.

VII.

That to enable the United States to maintain the independence of Cuba, and to protect the people thereof, as well as for its own defense the Government of Cuba will sell or lease to the United States lands necessary for coaling or naval stations at certain specified points, to be agreed upon with the President of the United States.

VIII.

That by way of further assurance the Government of Cuba will embody the foregoing provisions in a permanent treaty with the United States.

I heartily supported all the provisions of the Amendment except only the third paragraph. With respect to this I quote from the debate as follows:

MR. FORAKER: Mr. President, I am loath to differ with anything that the Committee has brought in here after careful consideration, but the more I think about it the more I think it would be unfortunate to adopt this amendment without changing the third clause, and I move that the third clause be amended to read as follows:

"That the Government of Cuba consents that the United States may exercise the right to intervene for the preservation of Cuban independence and the maintenance of a government adequate for the discharge of the obligations with respect to Cuba imposed by the treaty of Paris on the United States, now to be assumed and undertaken by the Government of Cuba."

MR. FORAKER: Mr. President, if I may be allowed now to proceed I want to state what it was in my mind to say a moment ago when interrupted, that if we adopt this amendment as reported by the committee it seems to me that it is likely to lead to conditions down there that would seem to invite intervention.

Suppose they have an election. One party or the other will be defeated. The party that is out is liable to complain, and with this kind of a provision, it seems to me it might be very naturally done; it would be thought that by making objection, by making trouble, and creating difficulties they would make a condition that would lead to an intervention of the United States to put the successful party out. It seems to me, that, instead of having a restraining influence, it would have an exciting influence and that the very result which the committee evidently sought to accomplish would be defeated, and the opposite would be the result.

Again, it seems to me that it is unnecessary. The language of this paragraph is that we shall be allowed to intervene for the preservation of Cuban independence and the maintenance of a government capable of discharging the obligations the United States has assumed.

Now, if we intervene we will intervene for the purpose of maintaining a government of that character. It is necessarily a government that can protect life, liberty and property.

We are not to intervene when they have a government on the ground that their government does not protect life, liberty and property; but we are to be allowed to intervene, according to this, only when they do not have a government capable of it. If they have a government capable of discharging the obligations which the United States has assumed, it will of necessity be a government capable of protecting life, liberty and property.

Therefore, I think we are accomplishing the same result which the committee had in view when we change the language as proposed, and it removes the invitation, if I may so characterize it, to which I have referred, which it seems to me would be a sort of standing menace to us as well as to the Cubans.

My amendment was rejected and the Platt Amendment was adopted as reported by the committee.

Precisely what I predicted might happen did actually take place in 1906, or rather was commencing to take place, and would have occurred if it had not been nipped in the bud. If we had not had in the White House at the time a thoroughly good friend of Cuba, and one who was thoroughly in sympathy with the struggle the Cubans had made for independence, and who was thoroughly familiar with not only the general law that was applicable, as well as with the Platt Amendment, all the evils I suggested might have followed from the second intervention, as it had been called, but which was not, in fact, an intervention in any proper sense of the word nor so intended. Fortunately, President Roosevelt was fully alive to the situation in all respects, and, while invited to intervene under the Amendment, which he had no power acting alone to do, yet, promptly acting under his general powers, he landed marines and so handled the situation as to bring about the best possible results, without any abuse whatever of our rights or opportunities.

For what he accomplished in the way of "saving Cuba to the Cubans" and in saving us from the serious troubles that were imminent, both countries owe him a special debt of gratitude that few have even mentioned and no one can well exaggerate.

It is easy for anybody to see this now. I am pleased to find, in looking through my files, evidence that I properly appreciated it at the time.

The following correspondence fully sustains this statement. I was prompted to send the President the telegram with which it commences by a sensational article appearing in the newspapers to the effect that the President had taken

it upon himself to intervene in Cuba under the Platt Amendment, instead of under his general power to land troops for the purpose of protecting the lives and property of American citizens, which he not only had an unquestioned right to do, but which it was his duty to do under the circumstances set forth by him in his answers:

TELEGRAM.

THE PRESIDENT,

CINCINNATI, OHIO, September 26, 1906.

Oyster Bay, N. Y.

The news from Cuba, published in morning papers, is of such character, that I feel compelled by a sense of public duty and official responsibility, notwithstanding I fear it may be unwelcome, to call your attention to the fact that under our treaty with Cuba consent is given to the United States, not to the President, to intervene on certain specified grounds, among them for the maintenance of a government adequate, etc., not civilly, as an intermediary, or with force of arms to overthrow established government or compel it to make terms with lawless bands of insurgents, who have no complaint except charges of fraud at the elections, for which there should be found ample remedies in the courts. Only the United States, acting, as the treaty contemplated, by the Congress and the President, representing the political departments of the government, can determine that ground exists for intervention under the treaty, and no one I imagine would claim that intervention according to the principles of international law could be otherwise authorized. Pardon me for saying this is an awfully serious matter, with far-reaching serious consequences to follow to this country, as well as to that, if more be intended than the preservation of law and order until the Congress can act.

J. B. FORAKER.

Confidential.

TELEGRAM.

EXECUTIVE OFFICE, OYSTER BAY, N. Y., September 26, 1906.

HON. J. B. FORAKER,

Cincinnati, Ohio.

Your communication will have my most careful consideration. I shall act only as I feel compelled to do in accordance with my oath of office for the protection of the persons and property of the United States and to carry out the law of the land. Let me, for your private information only, explain that there is not the slightest intention, and never has been, of acting against the established government, but only as acting in view of the established government abdicating its powers. I sent Bacon and Taft down into Cuba only on receipt of the statement from President Palma that he intended to resign, and that neither the Vice President nor the members of his Cabinet would consent to go on with the government, and, therefore, that chaos would come. I should be

derelict to my duty if chaos came and I hesitated to land troops to protect our interests and fulfill our obligations.

THEODORE ROOSEVELT.

TELEGRAM.

THE PRESIDENT,

CINCINNATI, September 27, 1906.

Oyster Bay, New York.

Many thanks for your telegram. It is gratefully reassuring and dispels embarrassing apprehensions.

J. B. FORAKER.

OYSTER BAY, N. Y., September 28, 1906.

My Dear Senator Foraker:—I thank you for your very kind telegram of September 27th. Here is briefly the situation as it now is. I shall ask you to treat this letter as confidential at the moment, though, of course, when Congress meets you are welcome to show it to any of your colleagues who you think should see it. I have been at my wits' end in this Cuban business. I most earnestly desire that Cuba shall be able to go on with her government. All I ask of the Cubans is that they shall be prosperous and happy, and they can not be prosperous and happy unless they have a reasonable degree of order and of protection for life and property. I share absolutely your indignation with the insurgents. They had serious grievances in connection with the election last December, but I do not regard these grievances as justifying, or coming anywhere near justifying, their plunging the country into possible destruction by an insurrection, and I hate to give the encouragement to them that is undoubtedly given by any recognition of them. At the outbreak of the insurrection all that I did was to give every possible support to the Palma government, the regularly constituted authorities, even going to the length of facilitating their getting cartridges from this country—for I felt that a successful insurrection, or, indeed, a long and dragging civil war, in Cuba, would be a serious calamity for Cuba and a real evil to the United States; but the Palma government proved helplessly unable to protect itself. It seems to have almost no support among the Cubans; it had taken no steps in advance which would enable it to put down an insurrection, and it did not develop a single man capable of meeting the crisis with nerve and vigor. Palma sent us a series of appeals asking for immediate armed intervention, saying that if it was delayed his government would fall and chaos would ensue; and then, in another telegram, reiterating the statement that he was going to resign at once, that the Vice President and Cabinet would refuse to go on with the government, and that he did not believe a quorum of Congress would assemble, so that absolute chaos would come and that we must land troops to protect property. At the same time I received all kinds of appeals from American citizens, who asserted that their property, and even their lives, were menaced, while we had information that both the British and French governments were preparing to act to protect their subjects unless we acted.

I am sure you will agree with me that it would not have been wise to summon Congress to consider the situation in Cuba, which was

changing from week to week, and almost from day to day, and as to which I was not yet in a position to make definite recommendation. You, my dear Senator, are the last man to advocate my playing a part like President Buchanan, or failing to take the responsibility that the President must take if he is fit for his position. I realized then, and realize now, as a matter of course, that anything I do must be of a tentative nature, and that as soon as Congress comes together it must decide as to what policy we shall permanently follow—always provided that by that time the situation is such that we can see our way clear to outline any permanent policy. Meanwhile, it was absolutely necessary for me to meet the existing emergency. Of course, to do nothing until Congress met would have been even more Buchanan-like than to have summoned Congress and tried to shift my responsibility upon its shoulders. I accordingly had to act, understanding, of course, that I could inaugurate no permanent policy, but simply handle affairs until Congress met and I would have the opportunity to lay before them a full account of what I had done, with the reasons that influenced me, and what arrangements, temporary or permanent, I would advise to be undertaken.

I at once sent ships to Havana and Cienfuegos, where there was the most pressing need for the protection of the persons and property of our citizens, and I made up my mind I would send Taft, with Bacon as an assistant, directly to Havana and would issue a public appeal to the Cubans, which appeal you doubtless saw in the press. My aim, of course, was to try to get some *modus vivendi* which would avoid the necessity of intervention on our part, and would give the Cuban republic another chance for its life—a chance I most earnestly hope it will take advantage of—though, of course, I am bitterly disappointed that after four years of peaceful independence the Cuban people should be guilty of the criminal folly of this insurrection. Taft and Bacon at once went to Havana, and I judge by Taft's daily, and sometimes almost hourly, cables to me that they have been having an awful time ever since. The situation changes like a kaleidoscope. The Palma government has been utterly unreasonable and has evidently been bent upon forcing us to an armed intervention in their support. Palma, for instance, insists that he will resign and that none of his adherents will remain in office and that we must take possession of the government. Yet when Taft gets the insurgents to agree to what, under the circumstances and having in view the utter military incapacity of the Palma government, is a very good compromise, namely, that Palma shall continue in office for his term and that a new election shall be held for Senators and Congressmen to take the place of those who were undoubtedly put into office by glaring frauds last December, Palma bluntly repudiates the agreement and says he will not go into it. Meanwhile, there were all kinds of obscure intrigues between some sections of the moderates and some of the insurgents. Nothing but the presence of our ships and of Taft and his party has prevented the bloody overthrow of the Palma government. We are receiving earnest appeals for additional forces to protect the lives and property of Americans around Cienfuegos, while Havana would probably see a hideous convulsion if we were not able to send ashore marines and sailors at a moment's notice—and Taft is convinced that there can not be much longer delay in landing them.

Taft's last dispatch to me is that Palma insists upon resigning and upon the United States taking control, because his resignation can not be accepted, inasmuch as there is not a quorum of Congress present, and so there will be no government at all. I am keeping as thorough direction of the situation as I can by cable, but (and here again I am sure you will agree with me) I must give Taft, who is on the ground, a good deal of latitude, for it is impossible to manage a job of this nature satisfactorily from the other end of the cable. I still hope we can avoid landing a very great number of sailors and marines. Hitherto, as you know, we have had only about one hundred of the same landed at Cienfuegos, but it may be impossible for me to avoid landing troops temporarily for the purpose of bringing about the pacification, just as we have landed them again and again, in, for instance, Santa Domingo, Honduras and China. I am fighting hard to try to bring about some arrangement which will obviate this necessity, but if it comes I can not shirk taking the necessary temporary measures, if I have to front doing so or else seeing chaos in Cuba.

I wish I could see you and consult with you.

Sincerely yours,

HON. J. B. FORAKER,
Cincinnati, Ohio.

THEODORE ROOSEVELT.

AUTHORSHIP OF THE PLATT AMENDMENT.

Mr. Coolidge, in his Life of Senator Platt, speaks of a magazine article that ascribed to Mr. Root, then Secretary of War, the authorship of the Platt Amendment.

He cites some correspondence between Senator Platt and some of his constituents and other friends, with the result of showing that the Platt Amendment, in the form in which it was adopted by the Senate, was, in its first stages, the work of Senator Platt, and in its last approved and accepted form the joint work of Senator Platt and Senator Spooner, who was also a member of Senator Platt's committee.

It is not vitally important to settle the question of authorship of even so important a piece of legislation as this, yet it is more satisfactory in such cases to distribute credit justly where that can be done.

Except only the provision to define *in their Constitution* the relations that were to exist for the future between the two countries, there was nothing in the Platt Amendment that had not been discussed over and over again long before the Committee on Our Relations with Cuba was created, and long before Mr. Root was made Secretary of War. Mr.

Root was appointed Secretary of War August 1, 1899, and Mr. Platt's committee was created at the beginning of the 56th Congress in December, 1899.

In some manner a correspondence started, soon after our occupation in Cuba commenced, between Major General James H. Wilson and myself. We had long been friends. He served with me as a Member of the Committee on Resolutions at the Minneapolis National Republican Convention of 1892 and also again as a Member of the Committee on Resolutions at the National Republican Convention held at St. Louis in 1896.

During the year 1899 he was in command of one of the departments of Cuba, with headquarters at Matanzas. He was distinguished for his ability as an observer and a thinker and as able to put on paper intelligently and logically such a situation as existed in Cuba, and present in an interesting and forcible way an intelligent plan for the solution of the problems to be solved.

I find on my files a memorandum of a letter written by him to Secretary Root, after he was appointed Secretary of War, calling attention to the General's report, written and filed *prior* to such appointment, in which the General substantially states every proposition embodied in the Platt Amendment except only the requirement that the definition of our relations should be embodied in the Cuban Constitution.

The General discusses all these propositions elaborately and with his usual ability.

The advancement of these propositions and the discussion of them, according to this record, occurred during the summer of 1899, before Mr. Root was made Secretary of War, and several months before the Committee on Our Relations with Cuba was created, and, according to the record as given by Mr. Coolidge, more than a year before the first meeting was held at which the members of the committee discussed what should be the nature of the Platt Amendment, phraseology to be employed, or anything else necessary to be considered.

My purpose in mentioning this is not to detract from the credit anybody is entitled to, but to extend some degree of credit to General Wilson, who, I happen to know, was among the foremost, in point of time at least, in the advocacy of most that was embodied in the Platt Amendment.

Any one of the gentlemen named was known to the whole country as abundantly able to have written the Platt Amendment without any help whatever, and either one of them undertaking the duty would probably have written substantially what was finally adopted. About this piece of legislation it can be said, as about almost any important act of legislation, that it was not in any exclusive sense the work of any one man; it was the result of the joint labors of those charged with the special duty of solving the particular problems to which it relates, and that they embodied in it not alone what originated with them, but also what originated with others, all of which was at the time being put to the test of exhaustive study and discussion, not only in the Senate, but also in the newspapers and magazines of the country.

What I have said as to the authorship of the Amendment relates only to the work of formulating it. The work of securing its approval in the committee, passing it in the Senate and securing its embodiment in the Cuban Constitution was undoubtedly the work of Senator Platt, Senator Spooner and Mr. Root more than of any other three men.

The committee could not have had a safer, wiser or more conscientious Chairman than was Senator Platt. He was an able lawyer, a Senator of long experience and a man who would promptly recognize the importance of any legislation of which he might be in charge, and who would naturally take with respect to it a broad and patriotic course.

He could not have had associated with him on the committee an abler or more helpful man than was Senator Spooner; and so, too, was he fortunate in having in the office of Secretary of War a man of such splendid capabilities, not only intellectually, but diplomatically, as was Secretary Root.

He was then in his very prime. He had been only a short time at Washington, but long enough to inspire everybody with confidence in his ability to discharge the duties of his office in an orderly, well-regulated and diplomatic manner. He was thoroughly familiar with all the principles of law applicable to his important duties, and knew how, better than anybody else in his department or outside of it, to surmount the difficulties by which he was confronted, and bring order out of confusion and establish stability where, following a war, there was necessarily and naturally much disorder and much indefiniteness in many instances as to the course to be pursued.

As Secretary of War, Secretary of State and later as Senator, he has shown himself familiar with all the departments and has become everywhere known as able to discharge with credit to himself and the nation the highest functions of government. He is now naturally and properly much talked about for the Presidency. Notwithstanding the objection of age which he makes to himself, all things considered, no one has been or will be named who, if elected, would or could meet all requirements better. He has announced that he considers himself too old. Perhaps it would be better if he were younger, but at this very time, as President of the New York Constitutional Convention, he is discharging duties less responsible but more burdensome to both body and mind than those of the Chief Executive and apparently without any prejudicial effects whatever. The truth is, Mr. Root works with far less friction than the ordinary man can work, due to his great ability and his familiar knowledge of public men, public questions and public affairs generally.

He is not only performing these arduous labors successfully so far as his duties as a presiding officer are concerned, but he is in a position to render a service to the whole American people greater, perhaps, than any he has rendered heretofore in all his long and eventful career.

I mean that he has an opportunity to use his great influence to stop, where that is possible, and to restrict and minimize

where it is not, the evil trend of socialistic ideas, forces and influences, in behalf of the preservation of representative government, according to the spirit and principle, if not literally according to the form given us by our fathers and practiced and enjoyed by the American people down to the point where a few years ago they were overtaken by what was miscalled a moral uplift, but which, properly named, was only a saturnalia of political demagoguery and crime. However all this may be, I venture the suggestion that his speech on the Panama Canal Tolls question would prove a far more serious objection to his candidacy than his age.

On this latter point he may be more sensitive than he should be on account of what he said in his speech notifying Mr. Fairbanks of his nomination for the Vice Presidency on the Republican ticket of 1904 about the age of his opponent, the Honorable Henry G. Davis of West Virginia, who had been nominated for the Vice Presidency on the National Democratic ticket.

Mr. Davis was at the time eighty-one years of age. Mr. Root gave great prominence to this fact. He pointed out the possibilities of a Vice President succeeding to the Presidency and dwelt earnestly upon the fact that in such a contingency the duties of the Chief Executive would devolve, if the Democratic ticket should be elected, upon one who, on account of his years, would in all probability be found unable to discharge them satisfactorily.

He impressed his point by calling attention to the fact that Mr. Davis was born in the year 1823, the same year in which the Monroe Doctrine was promulgated, and said a great deal more that was to the same effect. I do not hold any brief for Mr. Root, but it did seem that eighty-one was a little too old, particularly after he had thus dwelt upon the fact; but Mr. Root need not hesitate to become a candidate for the Presidency at seventy on account of anything he said at that time about Mr. Davis, who was then eleven years older than Mr. Root is now, a difference that would be of itself a sufficient excuse for not applying to Mr. Root what Mr. Root applied to Mr. Davis. But

he need not hesitate on another account, and for a better reason. If his comments should be resurrected and quoted in a hostile way, he could answer that Mr. Davis himself has absolutely and conclusively refuted all he then said about him in that respect by persistently holding on to life, good health and business activity. He is now in his ninety-second year, and is still hale, hearty, spry and carefully looking after his business affairs and interests, which are of the widest and most varied and exacting character.

Mr. Davis was the father-in-law of Senator Elkins, my good friend, and in this way I came to know him pretty well and to think a great deal of him.

He was sufficiently successful in business to amass a great fortune—so great that it was charged in Republican newspapers, during the campaign of 1904, that he had been nominated in spite of his advanced age because the Democratic managers were hoping to get from him a large campaign contribution.

There may or may not have been some truth in the charge, but if there was any truth in it, they made a mistake. Like most men who make their money, he knew how to keep it. As the campaign progressed, it became whispered about that he had refused to put up more than a nominal contribution, and much was made of the fact in a humorous way in the Republican newspapers at the expense of the Democratic managers.

This led to an amusing incident at the annual dinner of the Gridiron Club next following the election, at which one of the features was an exhibition of fortune telling.

Among others who came to have his fortune told was one of the members of the club dressed up so as to represent an aged gentleman of dignity and character, but with an old-fashioned suit and an out-of-date high hat, who was introduced as "Mr. Davis."

The fortune teller asked him, "What Davis?" to which he answered, "Henry Gazaway Davis; and I would like to have my fortune told." The fortune teller then asked,

"The late candidate for Vice President?" He answered, "The same." Thereupon the fortune teller answered that with great pride and pleasure he would undertake to accommodate him. Fitting his action to his word, he took his hand, and, after looking at it very carefully for a few seconds, dropped it and solemnly announced, "Mr. Davis, your fortune is precisely the same as it was before you were nominated."

Appreciation for the incident was shown by the great hilarity that ensued. I doubt if anyone appreciated the humor of it more than Mr. Davis himself.*

* Since the text was in print Mr. Arthur W. Dunn's book, "Gridiron Nights," has been published, and I find in it a reference to this incident, after which he adds:

"This was not the only allusion to the supposition that the venerable West Virginia Democrat had been nominated because of his very large financial resources, and the further fact that his contributions fell short of expectations. In a 'dead letter' skit was found a letter from the Democratic National Committee, acknowledging receipt of \$7.39 from Davis. Mr. Davis enjoyed it as well as anybody could. Mr. Davis and his son-in-law, Stephen B. Elkins, figured in a harmony performance where both were brought out and the statement made that politics should not divide families after the campaign was over. They were advised to shake hands and be friends. This they did amid the plaudits of the company, Davis remarking that he could stand for anything."

CHAPTER XXXIII.

PORTO RICO AND THE PHILIPPINES.

WITH respect to Porto Rico we had no specific pledges to redeem, but we had a general duty to govern that people in accordance with the spirit of our institutions, although outside constitutional restrictions and limitations, that it was deemed unwise if not impossible to apply there.

I have already mentioned that at the beginning of the 56th Congress, December, 1899, we appointed three new permanent committees, one for Cuba, one for the Philippines, and one for the Pacific Islands and Porto Rico. Of this I was made chairman.

On account of this assignment the duty fell to my committee, and especially to me, as its chairman, to draft what proved to be the first organic law ever enacted for the government of territory belonging to the United States, and yet not a part of the United States;—a distinction and honor I have always appreciated; especially so in view of the successful result of my efforts.

I had, before entering upon it, a good preparation for this duty in connection with the discussion of some resolutions introduced by Senator Vest of Missouri, in which he denied to the United States Government constitutional power to acquire, hold and govern territory, without making it an integral part of the United States. He had introduced his resolutions in anticipation of the acquisitions resulting from the war, and for the purpose, if he could secure their adoption, of making it impossible for us to hold colonial dependencies.

I spoke in opposition to his resolutions on the 11th day of January, 1899. My speech on that occasion was, under all the circumstances, one of the most important I made during all my service in the Senate. I took pains to review with care all the authorities bearing upon the question of the powers of our Government in the particulars named; advancing and supporting the proposition as well as I could that we were not inferior, but the equal in governmental power of any other nation in the family of nations, and that, as our fathers declared in the Declaration of Independence, we should have, we did have full power to "levy war, conclude peace, contract alliances, establish commerce, and to do all other acts and things which independent States may of right do."

As soon as my committee was organized I took testimony as to the character of the population of Porto Rico, and as to general conditions existing there, and then drafted what became the first organic law of the island; a statute approved by the President April 12, 1900, and upheld as a valid and constitutional enactment by the Supreme Court of the United States in the case of *Downes v. Bidwell*, 182 U. S., page 244, and in a number of other cases decided May 27, 1901. In all these decisions the statute was referred to as the Foraker Act.

MT. FORAKER.

Digressing for a moment from the thread of events I am mentioning, I note the fact that, in addition to the amendment prohibiting the granting of franchises in Cuba, called in my honor the Foraker Amendment, and this organic law for Porto Rico, called in my honor the Foraker Act, I was about the same time similarly and most unexpectedly remembered by having a mountain in Alaska named in my honor by Lieutenant Joseph S. Herron of the Eighth U. S. Cavalry, who discovered the same in 1899 while making an official exploration under the orders of the War Department.

According to his official report made and filed in 1901, this mountain is a part of the so-called McKinley Range, of which Mt. McKinley is said to be the highest peak on the continent, its height being given by Lieutenant Herron in his official report as 20,464 feet, while the height of Mt. Foraker is given in the same report as 20,000 feet.

His report is accompanied by official maps and a sketch of these two mountains, of which I insert herewith an official copy.

With this legislation and these decisions the way was cleared for intelligent action in the Philippines, where we had as yet done only preliminary work.

That this was fully appreciated by Governor Taft is shown by the following extract from a letter:

HONORABLE J. B. FORAKER,
United States Senate,
Washington, D. C.

MANILA, P. I., July 22, 1901.

My Dear Senator:—

I congratulate you on the result of the Supreme Court decision sustaining your view originally expressed on the constitutional question of so much importance to the welfare of these islands. A decision that the Dingley Tariff necessarily extends to the collection of imports in these islands would have produced a chaos and a difficulty in government here that I dislike to contemplate. Of course we have difficulties enough as it is, but the confusion and real hardship to the inhabitants involved by bringing these islands within the walls of the tariff never designed for their need can hardly be exaggerated. I presume that the discussion of the Philippines will continue with unabated zest in the next session of Congress. We have been so much occupied in trying to organize civil governments that we have not as yet begun to work upon the report which we are enjoined by Congress and executive order to prepare, but we hope to get it to the Secretary before Congress meets.

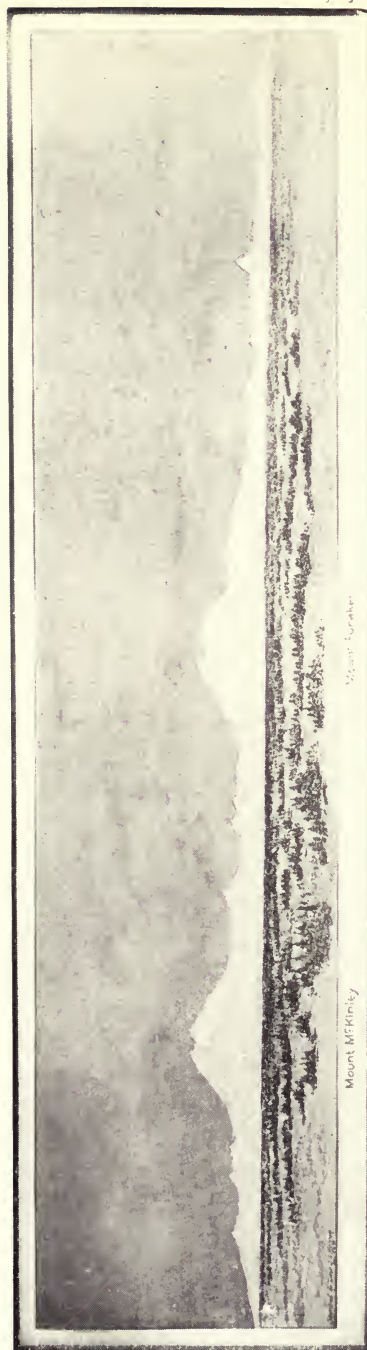
With warm regards and cordial remembrances, believe me,

Most sincerely yours,

WM. H. TAFT.

The statute so enacted for Porto Rico has continued with very few changes from that time until this to be the organic law of the island.

That my work in securing the passage of this law was appreciated by those competent to judge other than Judge



Mount McKinley

Mount Foraker

sketched by Lieut. J. S. Herron, November, 1899.

OFFICIAL SKETCH OF MOUNT MCKINLEY AND MOUNT FORAKER.

Taft and who were fully acquainted with the difficulties that were overcome, is shown by the following letter sent me on the passage of the act by the Senate by the ever-watchful and always capable Secretary of State, John Hay:

DEPARTMENT OF STATE.

WASHINGTON, D. C., April 4, 1900.

Dear Senator:—

I congratulate you most cordially on the accomplishment of a great piece of work, carried through with wonderful power and skill.

Yours faithfully,

JOHN HAY.

HON. J. B. FORAKER.

I received a large number of other letters of a congratulatory character, among them the following from Nicholas Murray Butler, now President of Columbia University. Mr. Butler doesn't know, and probably never will know until these notes are published, that it seemed to me in 1912 that he would be a good man, the best I could think of, for the Republicans to unite upon as a compromise candidate for the Presidency. I ventured to make the suggestion where I thought it might do some good, but found the lines so tightly drawn between Taft and Roosevelt that it went unheeded. A race for the White House between the Presidents of Columbia and Princeton would have been enough to arouse lively interest in the campaign, among college men at least, and, with the Republicans united, Columbia would have won easily. How the situation may develop for 1916 is not now clearly foreseen, but it may be safely assumed that, unless something shall occur in connection with the European War, or on some other now unforeseen account, to increase greatly the popularity of the President, he can be easily defeated by Butler or any other equally able and equally sound representative of real Republicanism.

His letter was as follows:

HON. J. B. FORAKER,
United States Senate,
Washington, D. C.

NEW YORK, April 4, 1900.

My dear Senator Foraker:—

Accept my cordial congratulations upon your brilliant and effective leadership in the struggle which ended yesterday, for the passage of a

bill for the civil government of Puerto Rico. I have been reading its provisions with care, and it seems to me to offer the ideal solution of the problems presented by our outlying possessions.

You have contributed in a most important way, in this measure, to the development of our national history, and to the expansion of our institutions, without exposing them to the danger of disintegration through the operation of strange and alien forces. I am

Cordially yours,

NICHOLAS MURRAY BUTLER.

A few days after the law was approved (April 21st) I fully reviewed it in a speech made before the Union League of Philadelphia, in which I showed the nature of its provisions, the character of the questions involved, and answered the criticisms that had been offered. Inasmuch as that was the first law of the kind ever passed by the Congress of the United States, and because it, to some extent, blazed the way for the Philippine legislation that came later, and because there was at the time much diversity of opinion as to the power of Congress to enact such a law and establish and administer such a government as it provided for, I incorporate here fully what I then said, for it covers all these different subjects:

Mr. President and Gentlemen of the Union League: The criticism of the legislation in respect to Porto Rico has been due to two misapprehensions.

First, as to the attitude of the President in regard to it; and second, as to the legal relation of Porto Rico to the United States.

The President, in good faith, recommended free trade between the United States and Porto Rico, but earnestly favored and personally—as well as officially—approved the bill that has been passed, because, in the first place, its provisions are a substantial and almost a literal compliance with his recommendation, and in the second place, they are far more liberal and generous than his recommendation was; and because, in the third place, in so far as the bill fails to strictly comply with his recommendation there was a necessity therefor, recognized by the President and all engaged in framing the legislation that has been enacted. The President, in his message, used this much-quoted language:

“Our plain duty is to abolish all customs tariffs between the United States and Porto Rico, and give her products free access to our markets.”

When he made that recommendation he had reference to what had occurred and the then existing conditions. Before Porto Rico was ceded to us she traded almost entirely with Spain and Cuba; but when the cession occurred, both Spain and Cuba closed their ports against her

products, except on payment of tariff duties that were so high as to be practically prohibitive.

The President, as Commander in Chief during the military occupation, could control the tariff duties levied on imports into the island, but had no power to alter those imposed by law on imports into the United States. In consequence our ports remained closed to Porto Rico except on payment of full Dingley rates of tariff, as were those of Spain, Cuba, and the rest of the world, and, as a result of it all, the war took from Porto Rico the markets she had and gave her none in return. This occasioned complete business stagnation and paralysis. Idleness prevailed everywhere, and soon tens of thousands were in want, and suffering for the necessities of life.

THE PRESIDENT'S INTENT.

This condition was relieved slightly by an Executive order that placed all food supplies, implements of husbandry, machinery, etc., on the free list going into Porto Rico; but matters were constantly growing worse, when, on the 8th day of August, 1899, the island was visited by a hurricane that devastated the coffee plantations and did great injury to all kinds of property.

By this course of events the people had been brought to absolute poverty and despair when the President wrote his message. What he had in mind was not any great principle or legal right or obligation, but practical and speedy relief for a suffering and starving people. It occurred to him that the greatest and speediest measure of relief would be realized by giving them free access to our markets.

He thought that would be kind, generous, liberal, and helpful to them, and he favored it for that reason. But in that message the President also pointed out the necessity of providing for Porto Rico a civil government to take the place of military rule, and recommended immediate action in that respect.

Both recommendations were general in their nature; both were made with full knowledge that action on the part of Congress could not be taken until an investigation might be made, and that the results of that investigation would, of course, control and determine the exact character of action to be taken.

Accordingly, when these recommendations were referred to the appropriate committees of Congress, they entered upon the work of investigating the conditions and general situation in Porto Rico for which they were to legislate.

As a result they found that the President was correct in saying that a civil government should be at once established. On many accounts this necessity was imperative; and they found that this government would require for its support not less than about \$3,000,000 annually.

They found also that an additional million dollars would be required to support the municipal governments of the island, making an aggregate of not less than \$4,000,000.

They found that the total valuation of property of all kinds situated in the island would not exceed, for taxation purposes, \$100,000,000.

They found that this property was already burdened with a private debt, evidenced by mortgages on record to the amount of about

\$26,000,000 of principal, with an accumulation of several years' interest at extravagant rates, that swelled the sum to probably \$30,000,000.

They found, in short, that poverty, bankruptcy, and ruin prevailed everywhere.

THE SITUATION AS GENERAL DAVIS SAW IT.

The following extract from the official report of General Davis is a true picture of the situation as the committee found it, except that it had become still worse in the six months that elapsed after the report was written and before the bill was passed. General Davis said:

"It does not require a demonstration to show that the industrial conditions existing before the hurricane, bad as they were, were excellent by comparison with those resulting from the storm.

"Formerly but two-thirds of the labor that sought employment at 30 cents, American money, per day, could secure it, and now not one-third of the labor is employed at any rate of pay. A hundred thousand or more individuals are being fed from the bounty of the American people.

"In some localities where the municipal government was feeble and the town councils did not command respect (and I am sorry to say these towns are not few in number), no collections whatever of taxes can be made. Some who could pay will not, because of their belief that the contributions will be squandered; others make this belief a pretext for nonpayment, and many others who were well off have no means whatever with which they can support their families.

"The coffee lands suffered worst. These trees are planted on the hill and mountain slopes, and in many places the declivities are very abrupt. The gale tore up the trees, loosened the soil, and the deluge of water converted the earth into a semifluid.

RUIN SPREAD BROADCAST.

"Then followed landslides, and thousands of acres of coffee plantations slid down into the valleys; trees, soil, rocks, and every vestige of culture are piled up in the bottom of the valleys. In such cases there is no restoration possible, for where there were smiling groves are now only bald rocks, which were uncovered by the avalanches.

"Where the soil was not disturbed the most of the coffee trees were either uprooted, broken off, or stripped of foliage and the immature berries. The larger trees of other varieties, which are habitually grown for shade to the coffee, were blown down, and their protection to the coffee trees is also gone; so where the trees are not wholly denuded the protection of the berries from the sun's heat is absent, and the green fruit is blighted and spoiled.

"It will take five years to re-establish these coffee vegas, and these will be necessarily years of want and industrial paralysis. The municipal governments are many of them prostrate. The police can not be paid, the prisoners can not be fed, and the schools must be closed if not wholly supported from the insulate treasury.

"From every town and village I am appealed to for financial help, donations; loans are asked, implored even, and the alternate of chaos is predicted as the result of refusal. Proprietors beg for financial help and the homeless for rehabilitation of their dwellings."

IMPORT DUTIES THE ONLY HOPE.

The committee further found that no system of property taxation was in force in the island, or ever had been, and that it would require at least a year, and probably two years, to inaugurate one and secure returns from it, and that, inasmuch as the people had no familiarity with such a system, it would be difficult, probably, to enforce it, at least for a time.

The committee also found that the public revenues of the island, except only such as were raised by a burdensome and complicated excise tax on incomes and business vocations, had always been chiefly raised by duties on imports and exports, a system with which the people were therefore familiar.

The committee further found that this system was already in operation, and that revenues were then and constantly being collected, upon which, so far as they went, the government could at once depend.

The committee further found that our internal-revenue laws, if applied in that island, would prove oppressive and ruinous to many people and interests.

Thousands of persons in that island, as the testimony shows, are engaged in the manufacture of cigarettes and cigars in a small way; and that rum, which is almost universally used—not so much as a beverage as for other purposes—is a species of distilled spirits which is sold in almost every store, grocery, and public place. To undertake to collect our heavy internal-revenue taxes—far heavier than Spain ever imposed—on these products and vocations would be to invite violations of law so innumerable as to make prosecutions impossible, and to almost certainly alienate and destroy the friendship and good will of that people for the United States.

The committee also found that the coffee grown in Porto Rico is of the highest grade and quality, and that it has always been protected by a tariff duty high enough to keep out of Porto Rico the cheap and low grades of coffee grown in Central and South America. We do not grow coffee, and therefore we admit it into the United States free of duty.

EPITOMIZATION OF SITUATION.

Here, then, to recapitulate, was the situation:

A civil government was a necessity. It must have \$3,000,000 for its support, and the municipalities must have at least one million more.

There was no system of direct taxation of property in operation. There was no time to establish one. Moreover, if there had been time, such a system would have entailed upon that people an impossible burden.

Four per cent, or even 3 per cent, is too burdensome a tax rate to impose on the property of even the most prosperous State in the Union. To impose it on Porto Rico would mean only disaster, failure, bankruptcy, and despair.

In view of these considerations, we decided, first, that we would find some way to exempt the people of that island from the direct taxation of their property, such as every other State and Territory of the Union has always been subjected to. The generosity of this proposition was

far greater and more helpful than that recommended by the President. No such favor has ever been shown to any other people for whom we have legislated.

We next decided, for the reasons already given, that we would not, for the time being, undertake to apply and enforce our internal-revenue laws in the island, but, except on merchandise imported into the United States, we would exempt the people of Porto Rico therefrom—another unprecedented favor, never before shown to anybody—and, in the third place, we decided that we would protect their coffee, which constitutes their chief industry and amounts to more than two-thirds of their exports, from injurious competition by levying a duty of 5 cents a pound on all coffee imported into Porto Rico; and then, finally, we determined that there should be collected on all goods imported into Porto Rico from foreign countries tariff duties as provided by the tariff laws of the United States; but that, instead of turning this money over to the National Treasury for the benefit of the United States as we have always heretofore done to every other Territory, we would turn it over to Porto Rico for the benefit and support of its government.

We then found, according to the best estimates we could make, that when all this had been done there would remain a large deficiency, amounting to from \$1,000,000 to \$1,500,000.

TAX REDUCED, NOT PUT ON.

The question, then, was how further we could raise revenue without directly taxing the property of the island to meet this deficiency; and we found that we could, in our opinion, best accomplish this by leaving a light tariff duty upon the commerce between the United States and Porto Rico; and so we finally concluded, and provided in the bill that instead of absolute free trade, which all desired, as well as the President, we would for a short time, until the local government could be put in operation and devise a system of taxation for its support, reduce the tariff on dutiable goods coming from Porto Rico into the United States only 85 per cent, instead of entirely remitting it, and that we would, for the present, allow all food products and necessities of life, farm implements, machinery, etc., to enter Porto Rico free of duty; but on the other articles, whatever they might be, we would reduce the Dingley rates only 85 per cent. You hear constantly of our putting on commerce with Porto Rico a tariff of 15 per cent, when the truth is we removed all but 15 per cent. We did not add or increase, but reduced and remitted.

We expressly provided, however, that on and after March 1, 1902, there shall be absolute free trade between Porto Rico and the United States, and that there shall be such free trade sooner—in a year, six months, or ninety days, possibly—whenever the local government shall have provided otherwise for its necessary revenues, and that, in the meanwhile, all collections, both those to be made in Porto Rico and those to be made in the United States, shall be paid over to Porto Rico for the support of its government without placing an additional burden upon the already overburdened lands and property of the island.

No such liberal and generous government as to revenues was ever given by this nation or any other to any Territory or colony. It far

surpassed all recommendations and all expectations. It should be further stated that an analysis of the articles constituting this trade shows that this tax so imposed would be borne almost exclusively by the sugar and tobacco interests, more able than any others to bear it without feeling any burden.

DEMOCRACY'S WRONG POSITION.

Our Democratic friends said, "The Constitution follows the flag," and that we were violating that instrument; that it required that duties, customs, and imposts should be uniform throughout the United States, and, consequently, we could not have free coffee here and protected coffee there; internal-revenue taxation here and no such taxation there, that we could not collect tariff there, except as here, for the common benefit of the whole country; and that Porto Rico, being a part of the United States, we could not collect tariff duties on commerce between there and here any more than between New York and Pennsylvania.

I think they believed what they said; and, no matter what happens, I think they will always believe it; but I think, nevertheless, they were wrong about it, just as they were wrong when they contended in 1861-1865 that there was no constitutional power to preserve the Constitution, and when a year ago they contended that we could not acquire territory, even by discovery or conquest, except with the present intention of ultimately admitting it to statehood.

But, however that may be, we answered that, in our opinion, Congress had power to govern these new acquisitions, and if so, it must be a power to govern them according to the varying conditions of each; that if the best interest of Porto Rico required a duty on coffee we ought to be able to give it or surrender the island; that if the destitution and poverty of the people of that island were such as to require an exemption of their property from taxation, we ought to be able to grant it or confess our incompetency to govern; that if the necessities of the new government required that tariff duties collected in the island should be paid to it for its support, we ought to be able so to provide; and that if the duty on commerce between there and here would be advantageous to the island, we ought to be able to legislate accordingly; and we not only contended that, in the nature of things, we should have such power, but that we do have such power, and that our position is fortified not only by reason, but also by authority.

The argument was long, it was exhaustive, it was convincing to the majority, and the legislation followed. It is unnecessary and impracticable to review it here, but suffice it to say that the radical, basic difference in the whole matter lies at the very beginning—as to whether or not Porto Rico is a part of the United States.

TRUE STATUS OF PORTO RICO.

I have observed that not only the Democrats but many Republicans have assumed the affirmative of this proposition to be true. Such is not the case. Porto Rico belongs to the United States, but it is not the United States, nor a part of the United States.

When we acquired Louisiana, Florida, New Mexico, etc., it was provided in the treaty in each case that the inhabitants should be

incorporated into the Union of the United States and be admitted to all the rights, advantages, and immunities of citizens of the United States.

The act by which we annexed Hawaii declares in express terms that the Hawaiian Islands shall become and be a part of the United States. But no such provision was incorporated in the treaty of Paris as to Porto Rico and the Philippine Islands; and if there had been, it is safe to say that treaty would never have been ratified. On the contrary, for the purpose of making it clear that no such consequence was intended, it was provided in the treaty that—

“The civil rights and political status of the native inhabitants of the territories hereby ceded to the United States shall be determined by Congress.”

This provision was insisted upon by our commissioners and was necessary to the ratification of the treaty, because we had then too little knowledge of the people of the Philippines and not enough of those in Porto Rico to know whether it would be wise or desirable to incorporate them into our body politic and extend to them the privileges and immunities of American citizenship and undertake to govern them under the Constitution and subject to its restraints and requirements.

The Constitution provides that a treaty shall be a part of the supreme law of the land. This provision gave to Congress an undoubted right to incorporate the inhabitants of these islands into the Union of States, as was provided in the Louisiana, Florida and Mexican treaties, or to leave them outside, as it might deem advisable; to make them citizens of the United States or withhold from them that quality; to impose on them the same burdens of taxation that are imposed on the people of the States and Territories of the United States or different burdens—heavier or lighter; to require them to pay internal-revenue taxes or not pay them; to give them free trade with us or to restrict it, for all these matters enter into and constitute their civil rights and political status.

THE POWERS OF CONGRESS.

In other words, the Congress had plenary power over the whole subject by the terms of the treaty itself; but Congress had this same power under the Constitution.

The third section of the fourth article provides:

“Congress shall have power to dispose of and make all needful rules and regulations respecting the territory or other property belonging to the United States.”

It will be observed that the Constitution, by the language of this provision, draws a distinction between the United States and territory belonging to the United States, and that it places territory belonging to the United States on a par with “other property,” so far as the power of the Congress to deal with it is concerned. Congress can sell or give away—“dispose of”—territory that simply belongs as property to the United States, but no one has ever pretended that the Congress has power to sell or part with any portion of the United States.

Congress must govern the United States according to the Constitution, which is the organic law of the Union, but it can govern a Territory that simply belongs to the United States as it may think best, restrained

only by the positive prohibitions of the Constitution and the general spirit of our institutions, which is above all written law.

In providing government for such territory Congress may enact that the Constitution shall extend to it, or, rather, that it shall have force and effect therein, to use a more accurate expression.

In such case the Constitution, in so far as applicable, would be a rule of action to be observed there the same as in any State, but in the absence of such action by Congress it would not have there such force and effect.

This doctrine has been clearly established by repeated decisions of the Supreme Court of the United States, as I understand them, and has been uniformly acted upon in all legislation for our Territories since the beginning of our Government.

In the early Territorial legislation the Constitution was not extended to or given force and effect in the Territories by Congress, and all legislation proceeded on the theory that in consequence the Congress was not limited or restrained by its requirements, except as already indicated.

Since 1850 it has been the practice "to extend" the Constitution to Territories, a clear recognition of the fact that without such action it does not so extend.

We have heard much in the recent discussion about the Constitution extending, *ex proprio vigore*, to newly acquired territory at the moment of its acquisition.

This doctrine originated with John C. Calhoun and was advocated by him for the first time in the debates preceding the legislation establishing the Territorial governments for New Mexico, Arizona and Utah, and he advocated it in the interest of human slavery, to carry that institution into those Territories.

EXTENSION OF CONSTITUTION.

Thomas H. Benton, in his *Thirty Years in the United States Senate*, on page 718, Volume II, has this to say of the origin of this doctrine, its purposes, and its character:

"A new dogma was invented to fit the case—that of the transmigration of the Constitution (the slavery part of it) into the Territories—overriding and overruling all the anti-slavery laws which it found there, and planting the institution there under its own wing, and maintaining it beyond the power of eradication, either by Congress or the people of the territory. Before this dogma was proclaimed efforts were made to get the Constitution extended to these Territories by act of Congress; failing in these attempts, the difficulty was leaped over by boldly assuming that the Constitution went of itself—that is to say, the slavery part of it.

"History can not class higher as a vagary of a diseased imagination this imputed self-acting and self-extension of the Constitution. The Constitution does nothing of itself—not even in the States for which it was made. Every part of it requires a law to put it into operation. No part of it can reach a Territory unless imparted to it by act of Congress."

FOLLY OF DEMOCRATIC POSITION.

Mr. Benton is none too severe in his comments. If the Constitution had such migratory powers it would involve us in all kinds of embarrassments and weaknesses. Territory once acquired could never be parted with, because a part of the United States, no matter how undesirable it might prove. If, instead of stopping when we did in the Spanish war, we had gone on and taken Spain itself, it would have been no longer Spain, if we had concluded to hold it, but the United States, to be governed according to our Constitution, no matter how inapplicable and unsuited to that people its provisions might be.

If we should discover a new country, the mere act of planting the flag and taking possession would make it a part of the United States, to be governed by the Constitution, no matter how unfit its inhabitants for such government.

You have only to pursue the subject to multiply absurd consequences. The truth is, our fathers intended, in all matters, and particularly in so vital a matter as the acquisition and government of territory, that our Government should have complete sovereign power—should be the full equal in power to any other sovereign power on earth.

They so declared in the Declaration of Independence when they proclaimed that "These United Colonies are and of right ought to be free and independent States; that they are absolved from allegiance to the British Crown, . . . and as free and independent States they have full power to levy war, conclude peace, contract alliances, establish commerce, and to do all other acts and things which independent States may of right do."

Such was their declared purpose, and the Constitution gave effect to that purpose by conferring on the National Government the power to declare war, conclude peace, make treaties, and make all needful rules for the government and disposition of territory belonging to the United States.

Pursuant to these powers, and in the exercise of them, we had war with Spain. We were successful. We invaded and captured her territory. We concluded peace, and, as one of the conditions, exacted a cession to the United States of Porto Rico, the Philippines, and Guam. All came to us by the same title. All stand in the same legal relation, unaffected by the fact that some came willingly and others resisting our authority.

LIMITATIONS OF OUR POWER.

Therefore it follows if Porto Rico is a part of the United States, so are the Philippines. If the Constitution is in effect in Porto Rico as a result of mere acquisition, so is it in effect in the Philippines. If duties, imposts and excises must be uniform in Porto Rico as compared with the United States, so must they be in the Philippines. If the Porto Ricans are citizens of the United States, so are the Tagalogs, the Sulus, the Igorrotes, the Negritos, and all the other numerous tribes and peoples of the archipelago.

If we can not protect coffee in Porto Rico, we can not protect hemp, sugar, tobacco, or anything else in the Philippines. If we can not exempt Porto Rico from internal-revenue taxes, we must compel their payment

in Luzon and Mindanao. If we can not levy tariff duties on goods going into Porto Rico from the United States, we can not levy them on goods going from here into the Philippines. If we can not tax goods coming from Porto Rico into the United States, we can not tax goods coming here from the Philippines. Whatever we can or can not do in the one case is and must be the measure of our power in the other.

The legislation that has been enacted for Porto Rico raises all these questions, and it is fortunate that it does, for sooner or later, and the sooner the better, they must find their way to the Supreme Court of the United States, where, and where alone, they can be authoritatively settled. I have my opinion as to what the court must hold, but others have a contrary opinion, and they have so read and interpreted the authorities as to support their views.

For two years and more we have been arguing these questions and discussing the decisions bearing upon them without other apparent effect than to confirm differences.

Party lines have now been drawn with respect to them, and the one view or the other will prevail, so far as the political department of the Government is concerned, accordingly as the one party or the other party is in power.

This will continue until the only tribunal that can settle it in a way binding upon all has spoken. The consequences are so momentous and so far-reaching as to make it highly important that we have this settlement at the earliest convenience. We have reached the point in the development of our resources and the multiplication of our industries where we are not only supplying our home demands, but are producing a large surplus, constantly growing larger. Our greatest present and prospective commercial need is for markets abroad. We can not find them in the countries of Europe. Their demand upon us is limited. They strive to supply themselves and to compete with us in the markets of the world. Our opportunity (and theirs also) is in the Far East.

In China, Japan, Korea, the Straits Settlements, Australasia, and Oceanica there are from 600,000,000 to 800,000,000 people with whom the rest of the world has just begun to trade.

Our competitors recognize that this commerce, now only fairly begun, will grow rapidly to hundreds, and then on to thousands of millions annually. Russia, Germany, France, and England are all striving to secure their full share, and only recently there were indications that some of these nations were not only willing but intending to take it all. It seemed as though the door was to be closed against us, but now it has been happily settled otherwise.

WHAT MCKINLEY HAS DONE.

Many great deeds of both war and peace stand to the credit of the Administration of William McKinley, but there are few, if any, greater in far-reaching good to the American people than has been accomplished by the diplomacy that has secured for us an open door to the markets of China. Through his wisdom, foresight, and statesmanship it is now assured that we are to have an even chance for our full share of that great commerce, and that is all we ask with respect to it.

The skill of our artisans and the ability of our merchants, manufacturers, and representatives will do the rest. For many years to come

we shall have customers for all that we can produce. What this makes possible in development, in power, in wealth, in happiness, in glory, and honor to the American people and the American name no language yet employed has exaggerated.

But an open door to China means an open door to the Philippines or a mean and niggardly refusal to grant what we have so generously demanded and so gloriously secured, and an open door to the Philippines means that the ships and merchandise of other countries shall enter the ports of those islands upon the same terms and conditions that our own ships and merchandise enter them.

If the Philippines are a part of the United States, and the Constitution is already in force and effect there, *ex proprio vigore*, simply because the flag is there, and if, on this account, we can not levy a tariff duty on our merchandise going into the Philippines, then, of necessity, it must go in free of duty; and if we enter free of duty, then everybody else who is to share the open-door policy with us will also, of right, enter free of duty; and if, when there in the Philippines, they are already within the United States, on the theory that they are a part of the United States, then, indeed, are we undone; for in such case it must follow that no tariff duties can be levied on articles coming from there here, even for the purpose of revenue; and thus an open door to the Philippines would prove an open door for the whole world to the whole United States.

To avoid the force of this result it has been suggested that all talk about an open door to the Philippines is mere speculation. That is not true. It is not speculation. While it is true that we have it within our power to refuse, it is not within our power to avoid meeting the question and as soon as the insurrection has been suppressed and a civil government has been established, we must pass upon it, either to grant or refuse it.

If we should grant it and then find out that the position the Republican Party has taken as to the power of Congress, as exercised in the Porto Rico case, is untenable, we would have made a mistake against which there would be no ability to relieve except only by a radical change of policy with respect to the whole subject.

But those who say that talk about an open door is speculative lose sight of the fact that, by the terms of the treaty of peace, Spain already has, for the next ten years, an open door to the Philippines, and if it should turn out that we can not levy duties on our products going into the Philippines, neither can we levy duties on goods from Spain going into the Philippines, and whatever may be said as to the right of other nations, under "the most-favored-nation clause" of our treaties with them, to enter with their ships and merchandise on the same terms accorded Spain, it can not be doubted that Spain, and through her other countries, can ship to the Philippines without limitation, and from there here, without restriction or duty of any kind, except only such as we have power to impose on what comes from the Philippines here in our own ships, in our own commerce with those islands, and that would mean free entry for Spain into the whole United States, and for all others who might make of Spain and the Philippines an open door. On this point there is no speculation, but only serious reality.

All this might be elaborated, but I have said enough to indicate the considerations that controlled the legislation for Porto Rico.

PORTO RICANS HELPED.

It was never expected that our Democratic friends would be able to both understand and appreciate it, but certainly all Republicans ought to be able to see the necessity and the wisdom of what has been done, and that, instead of having been discriminated against, the Porto Ricans have been favored in the matter of taxation with the most liberal and generous provisions that have ever been made for anybody by our Government, while at the same time our own interests have been protected against all possible contingencies.

In every respect this legislation is commendable. Some of the opposition newspapers have been claiming that the civil government provided for concentrates too much power in the hands of the President. I do not remember that any Democratic Senator made any such criticism. On the contrary, they very generally approved the bill in that respect; but without regard to that fact, the truth is that, by comparison, it will be seen that the civil government provided for Porto Rico is far more liberal than were any of the early Territorial governments established for our own people, and quite as liberal as our responsibilities will allow.

The first Territorial government established after the adoption of the Constitution was for Louisiana, and in that case all executive, legislative, and judicial power was lodged in the appointees of the President, who was made absolutely autocratic.

That was under Thomas Jefferson, who was certainly thoroughly Democratic. The same was true of the Territorial governments of Florida, Mississippi, Alabama, Arkansas, Missouri, and others, on down until the days of Republicanism.

The people were not allowed to choose any of their officials under these Territorial governments. It has been only in later years, and under Republican rule and legislation, that they have been allowed a partial participation in the conduct of their governments. Even today in our Territories, inhabited by our own people, familiar with our institutions and the spirit of our laws, and accustomed to governing and capable of doing so, the President appoints the governors and the judges and all the principal officials.

REPRESENTATION IN LEGISLATURE.

In Porto Rico we allow the people to elect the lower house of the legislature and give them representation by appointment in the upper house and in all other departments of their government.

The provision that the upper house of their legislative assembly shall be appointed by the President is due to the fact that among its members are the bureau officers, upon whom will devolve the responsible duty of organizing all the departments of that government, and upon whom we must rely to make that government as nearly American as possible.

In no other way could we safely proceed to secure the necessary ability and experience for such work.

Like everything else the Republican party undertakes, we propose to make this a success—a success for Porto Rico and a success for the United States—and when that has been done we shall only be too glad to increase the participation of the Porto Ricans in the conduct of

their government as rapidly as they are found equal to its demands, and nobody will be happier than we when we can give over the whole matter to themselves. I hope and believe that the day is not far distant, but it would not be kindness to Porto Rico to do that now.

They have in that island about 1,000,000 people. Of this whole number only about 15 per cent. can read or write in any language. Only about the same number own any property. This means that there are in that little parallelogram of the sea, about 100 miles in length and 35 miles in width, fully 800,000 men, women, and children who are absolutely illiterate and who are as dependent as poverty can make them. None of them have had any experience in governing themselves, and very few have any conception of what is meant by free popular government according to our ideas and institutions.

CHARACTER OF ISLANDERS.

They are of the Latin race, and are of quick and excitable temper, but they are at the same time patient, docile, frugal, and most of them industrious. The children show great aptness and ambition to acquire an education and to learn to speak our language, and all seem anxious to learn our ways and to qualify themselves for the higher and better conditions that await them.

They have never known what it is to have schoolhouses and public instruction. They are almost entirely without highways. Their island has never been developed or improved, but we have made provision under which, during the next twelve months, there will be erected in Porto Rico more schoolhouses than were constructed by Spain during all the four hundred years of her rule, and more roads and bridges and public improvements will be under construction in six months from this time than even the Porto Ricans themselves ever contemplated or desired.

This is the beginning of a new era. It has taken time to provide this machinery, and will take two or three months more to set it fully in operation, but the start, when made, will be a sure one, to be followed by the quickenings of a new life, with new and manifold opportunities for peace, happiness, and prosperity far exceeding any hopes that have been excited or any anticipations that have been entertained.

When General Miles landed in that island, at the head of our gallant and victorious Army, he made proclamation that he had come not as an enemy, but as a friend, and that the United States would restore to them prosperity and give them the benefits of our liberal institutions of government. The inevitable results of the legislation that has been enacted will constitute a complete redemption of all these promises, and a triumphant vindication of the capacity of the Republican Party for that constructive statesmanship so essential to the safe guidance of the Republic in its onward course of expanding growth and power.

The mere fact that this law has continued in force, practically without change, ever since it was enacted, now full fifteen years ago, is enough to indicate that it proved satisfactory when put into practical operation. But aside from

that fact, I have been favored with many flattering testimonials to that same effect from the Governors and other officials of the island who have administered it. Another, and one I prize highly, is the following:

THE WHITE HOUSE, WASHINGTON.

November 27, 1906.

My Dear Senator Foraker:—I have just returned from Porto Rico. Not only is the Island flourishing greatly, but all those competent to judge are a unit in feeling that the law for the government of the Island is one of the best bits of legislation ever put upon our statute books. Governor Winthrop particularly desired me to tell you so. I wish I could feel that our Hawaiian law was as satisfactory. Do Alaska matters come before your committee? I need not tell you how defective the laws for Alaska are and how desirable it would be to have them remedied.

I have been immensely impressed with the excellent work that is being done at Panama on the canal.

With regards to Mrs. Foraker,

Sincerely yours,

THEODORE ROOSEVELT.

HON. J. B. FORAKER,
United States Senate.

To this letter I sent the following answer:

November 28, 1906.

My Dear Mr. President:—I am greatly pleased to have your note of November 27th, giving me the message sent by Governor Winthrop. It is amazing to me, how, amidst all you are doing, and with the demands upon your time and attention, that must have been piled up awaiting your return, you could find time on your first day here to write me such a note. It adds greatly to the appreciation I have for what you communicate.

Alaska is not within the jurisdiction of my committee, but Hawaii is. I did not have anything to do with the framing of the organic law for Hawaii, except as a member of the Senate; that is to say, I was not on the committee that framed the statute, and had no special responsibility with respect to it. All that occurred before my committee was created.

I shall try to see you as soon as the rush, consequent upon your absence, has subsided, and shall hope that I may then be able to get the benefit of your views as to the two or three matters concerning Porto Rico and Hawaii, about which I have been trying to secure legislation.

I am glad to note in the morning papers that you intend to urge Congress to make the citizens of Porto Rico citizens of the United States.

You are doubtless aware that at the last session I introduced a bill making that provision, and that I reported it favorably from my com-

mittee, and that it is now on the calendar awaiting the action of the Senate. I was unable to get action upon the bill at the last session because the Rate Bill discussion took so much of our time that it was shut out along with a number of other measures that will now come up for consideration.

With congratulations upon your safe return, I remain

Very truly yours, etc.,

HON. THEODORE ROOSEVELT,
The White House.

J. B. FORAKER.

I incorporate this correspondence not only because it is pertinent, but also because it brings to mind something I feel like explaining every time my attention is called to it, and that is the fact that when the first Porto Rican legislation was enacted we failed to make the Porto Ricans citizens of the United States. It was not my fault that we did not do this, for I so reported the bill and did everything I could to have it so enacted, but a majority of the Senate thought it was then premature, and provided instead, that they should be simply "citizens of Porto Rico and as such entitled to the protection of the United States," a phrase I framed and substituted when I found I could not do better.

The denial of United States citizenship was a cause of much dissatisfaction to the Porto Ricans, not so much because of any privileges denied as because they regarded it as a reflection on their loyalty and their qualifications for citizenship.

I tried several times, while I was yet in the Senate, to secure an amendment to the law that would make them citizens of the United States, but all my efforts in that respect were in vain, notwithstanding I had the efficient help of President Roosevelt, who specifically recommended it, not only in formal message, but informally, in discussing the matter with members of Congress, and notwithstanding the further fact that the sentiment of Republicans with respect to the question so radically changed, that in the National Republican platform of 1908 they declared:

We believe that the native inhabitants of Porto Rico should be at once made collectively citizens of the United States.

This declaration was in effect repeated in the platform of 1912 by the following declaration:

We ratify in all its particulars the platform of 1908 respecting citizenship for the people of Porto Rico.

In addition to commendations of this organic law of the character mentioned, the people of Porto Rico appointed a committee, consisting of three of their foremost citizens, to visit Cincinnati and express to me personally and formally, the thanks and assurances of appreciation of the people of that island for the very great benefits conferred upon them by this statute.

What they so highly appreciated was the substitution of civil for military government, and the opportunity given them to participate in the administration of the government so established.

There were many Senators and Representatives in Congress who doubted the wisdom of giving them, without any kind of probation, a government of that character.

Some of the members of President McKinley's Cabinet, Secretary Root among them, were of this opinion, and they caused him to have some doubt for a time as to the wisdom of the legislation we were proposing to enact.

I had a number of conferences with him on the subject, with the result that he finally became thoroughly satisfied that the legislation was just and appropriate and took great pleasure in approving it, not only because of the character of government thus provided, but also because the legislation so enacted raised most of the questions it was desirable to have decided by the Supreme Court to enable us to legislate intelligently for the Philippines, which was, from the beginning, regarded as a far more serious and difficult problem than that presented by Porto Rico.

THE PHILIPPINES.

I was not a member of the Philippines Committee, and did not, therefore, have any special responsibility for the government of those islands. On account, however, of the rebellion

of Aguinaldo, which I thought might have been avoided if it had been more diplomatically handled in its early stages, and because of the great differences among the tribes inhabiting those islands, and especially on account of their different degrees of civilization, varying all the way down from those intelligent enough to know something about government, to those who were, like the Igorrotes, confessedly without any capacity therefor, I read carefully the very able, interesting and instructive reports made by Dr. Schurman as President of the Commission, and kept as well informed as I could as to the general situation. In this way I happened to be able, although not on the committee, to participate in the debates on a number of occasions when it seemed necessary and important to answer the attacks that our Democratic friends were from time to time making, and to advocate and defend the policy of President McKinley and his successor, as the progress of events made that necessary.

In this way I became so far familiar with the whole subject that it would be no very great labor to review and point out from the legislative standpoint the different steps taken leading up to the establishment of civil government, but that would be too much like writing history.

My purposes are simpler and less burdensome. All I desire to do is to call attention to the fact that Congress provided in one of our first enactments on the subject that all military, civil and judicial powers necessary to govern the Philippines should be vested in such person or persons as the President might appoint, and that these powers should be exercised by these persons in such manner as the President might direct; that, in accordance with this authority, President McKinley appointed the Commission of which Dr. J. G. Schurman was President, and of which Admiral Dewey, General Otis, the Honorable Charles Denby and Professor Dean C. Worcester were members.

The first duty of this Commission was to make an investigation of conditions in the Philippines, and from time to time report the same to the President. It was these reports that proved so helpful. It was also the duty of this Commission to make such recommendations as they might deem proper

as to the form and character of government that should be instituted.

In accordance with their recommendations made in due time it was determined by the President that until Congress should otherwise direct, the head of the government of the Philippines should be a Governor-General appointed by the President; the Governor-General to be assisted by a Cabinet appointed by himself.

As soon as President McKinley became fully familiar with the situation and its requirements, he wisely determined to call to his assistance in that work the best talent he could command, and, accordingly cast about for such a man to appoint Governor-General. In this connection he consulted me about the qualifications of William H. Taft, who was then a Judge of the United States Circuit Court of Appeals. He was not very intimately acquainted with him, but it had occurred to him, perhaps upon somebody's suggestion, that he would be a good man to place at the head of the government in those islands during its formative stages. The suggestion met with my hearty approval, as the following letter from Judge Taft received in due time indicates.

I quote it as showing the nature of commendation I gave him and his appreciation for the same:

February 11, 1900.

My Dear Senator:—I am very much obliged to you for the kind words of your letter and the approval of the appointment which you expressed to the President when he consulted you as to its wisdom before he made it. I shall always have a feeling that the course of my life has been largely due to you who gave me the opportunity and first honor from which all that I have had since has easily flowed. Good fortune has followed me with so much persistence that I tremble for the future on the principle of compensation.

The work now to be undertaken is of the most perplexing and original character and I gravely fear that I am not qualified. But the die is cast—I must attempt it. Such words as yours are full of encouragement. I thank you for sending me the Porto Rico bill which will be of much suggestive force in the new duties I have undertaken to discharge.

Gratefully and sincerely yours,

WM. H. TAFT.

THE HONORABLE J. B. FORAKER,
United States Senate,
Washington, D. C.

P. S. Judge Day and I were very sorry not to see you in Washington when we called.

CHAPTER XXXIV.

THE NATIONAL REPUBLICAN CONVENTION OF 1900—THE RENOMINATION OF McKINLEY—MEMO- RIAL ADDRESSES.

QUICKLY following the selection of Judge Taft for service in the Philippines, and the enactment of the Porto Rican legislation, came the National Republican Convention of 1900 at Philadelphia.

Again McKinley requested me to place him in nomination before the convention, and I promised to do so.

A few days before we went to Philadelphia Senator Hanna invited me with a number of others to take breakfast with him and to come prepared to discuss what should be put into the platform to be adopted at Philadelphia. When we had breakfasted and had fully discussed all the different questions that were raised, and were about to separate, he said he was pleased with what I had suggested the trust plank should be and requested me to put my conception in writing and give him a copy.

In compliance with this request I wrote and handed him the following:

While recognizing the necessity and legitimacy of aggregations of capital to maintain and extend our rapidly increasing foreign trade we condemn all conspiracies and combinations intended to restrict trade, limit production and affect prices, and favor such legislation as will effectively restrain and prevent all such abuses and protect and promote competition and secure the rights of producers, laborers, and all who are engaged in industry and commerce.

I served at that convention as the Ohio member of the Committee on Resolutions and assisted in framing the platform, of which the trust plank reads as follows:

We recognize the necessity and propriety of the honest co-operation of capital to meet new business conditions and especially to extend our

While recognizing the necessity
and legitimacy of ^{honest & legitimate} aggregations of
Capital to maintain and extend our
^{trade - especially in} rapidly increasing foreign trade we
condemn all conspiracies and
combinations intended to restrict
trade, limit production and ~~of~~
^{control} ~~prices~~ prices, and favor such legis-
lation as will effectually restrain
and prevent all such abuses and
protect and promote competition
and secure the rights of producers
laborers and all who are engaged
in industry and commerce -

While recognizing the necessity
and legitimacy of aggregations of
capital to maintain and extend our
rapidly increasing foreign trade we
condemn all conspiracies and
combinations intended to restrict
trade, limit production and af-
fect prices, and favor such leg-
islation as will effectively restrain
and prevent all such abuses and
protect and promote com-
petition and secure the rights of
producers, laborers and
all who are engaged in industry
and commerce.

rapidly increasing foreign trade, but we condemn all conspiracies and combinations intended to restrict business, to create monopolies, to limit production, or to control prices; and favor such legislation as will effectively restrain and prevent all such abuses, protect and promote competition and secure the rights of producers, laborers, and all who are engaged in industry and commerce.

The plank adopted was a revision of what I gave Senator Hanna, of which I had retained a copy.

Mr. Croly found among Mr. Hanna's papers the rough draft I had given him. It was in my own handwriting with some interlineations, probably in the handwriting of Senator Hanna. Mr. Croly publishes a facsimile of what he found as "written by Mr. Hanna himself after consultation with the President." He publishes this facsimile copy as he tells us

. . . in order, both to give an example of Mr. Hanna's handwriting and to call attention to the emendations in the draft.

Mr. Croly points out the wisdom of the declaration and the credit Mr. Hanna was entitled to on that account, and then concludes his comments as follows:

It need only be added that the plank, as reproduced herewith, was accepted by the Committee on Resolutions of the Convention practically intact. The word 'legitimacy' became 'propriety' and the first sentence was made co-ordinate with the second instead of dependent upon it.

Any one familiar with our respective handwritings would see at a glance that the draft published by Mr. Croly was in *my* handwriting; but as proof thereof it is rather interesting to reproduce the Croly facsimile and insert here also for comparison with it a facsimile copy of what, as I dictate these notes, I have turned aside to write as the language of my rough draft is read to me, without even glancing at the same, and, therefore, without any chance to imitate, even if I desired to do so.

The similarity after the lapse of fifteen years is strikingly sufficient, but it is not so much to sustain my statement that I offer this evidence as to show that Mr. Croly was able to

find something to commend in something I did, *when he did not know I had done it.*

Senator Hanna arrived in Philadelphia to attend the convention two or three days before I was able to leave Washington.

Among other things telegraphed from there after his arrival was a statement that he had arranged with Senator Allison of Iowa to place McKinley's name before the convention for renomination. I read it just as I was leaving Washington. Inasmuch as the President's request that I should nominate him had been made voluntarily and with evident sincerity and earnestness, I doubted the truthfulness of the dispatch, but thinking it better to learn from him directly whether or not he had changed his mind, I called on my way to the train and had a brief interview with him, in which he very emphatically said with some indication of irritation, that he had not changed his mind; that he had at no time even considered anybody else; that he would not, under any circumstances he could foresee, change that part of the program; but that if he should for any reason then unforeseen change his mind, I would be the first man to whom he would communicate that fact. I told him it might be better to have somebody from another State discharge that duty for him, and that I would gladly stand aside in favor of Senator Allison or anybody else, if for any reason he at any time desired to make a change, but he flatly refused to consider the suggestion.

A brief conversation followed as to the general situation when, as I was taking my leave, he rather abruptly and energetically said, "I hope you will not allow the convention to be stampeded to Roosevelt for Vice President."

I knew he did not some time earlier want Roosevelt on the ticket with him, and had learned it from Roosevelt himself, but inasmuch as he had never spoken to me on the subject, I was surprised that he should do so then, and in the earnest language he employed.

I told him I was sorry to learn that he felt as his request indicated, because I thought the indications were that

Roosevelt would be nominated, and that I thought he was the strongest man who could be put on the ticket with him, but that in addition I regarded myself as committed to his support, and that I could not honorably do otherwise than support him if he should be a candidate.

I don't know whether I mellowed his opposition or not, but when he learned how I was situated, and saw how I felt about it, he said it was all right for me to support Governor Roosevelt, and that he would understand that my action in doing so was not unfriendly to him.

I did not tell him in what way I had become committed. It did not seem necessary I should do so, and I probably feared it might not be entirely agreeable, although I think he would have enjoyed the streak of humor that ran through the story.

The facts about the matter were, however, that my relations to Governor Roosevelt had been cordial from the time I first met him at the Chicago Convention in 1884. They had become still more cordial after we met in Washington at the beginning of the McKinley administration, under which he was Assistant Secretary of the Navy, because of our entire accord as to the Cuban questions, both before and after the Spanish-American War. I mean those questions that led to the war, and the questions arising after the war concerning the adjustment of the political and governmental situation in Cuba, and the withdrawal of the United States from the control of that island in accordance with the pledge given in our Resolutions of Intervention.

He had occasion shortly before the Philadelphia Convention to make a visit to Washington.

He called upon me, as he did upon others at the Senate. In his conversation with me at the time of this call he told me that he wanted me to favor him by co-operating with Senator Lodge and other friends of his to prevent his nomination as Vice President at the approaching convention. He wanted to succeed himself as Governor of New York.

I told him I disliked to do anything of the kind; that there was a strong sentiment throughout the country in

favor of his nomination and that I thought he could bring greater strength to the ticket than anybody else who had been mentioned, and that if the disposition to nominate him should continue he ought to yield to the demand.

He seemed quite determined, however, in his purpose to refuse, but the following day he returned, with all the real Roosevelt spirit fully aroused, and told me, in substantially the following language, that he had in some way learned since talking with me the day before that "the McKinley people" did not want him on the ticket, and "*that*," he said, "makes a different case, and I feel differently about it. There is no reason why they should not want me, and I will not allow them to discredit me. If the convention wants me, I shall accept."

Notwithstanding he told me all this, he probably reconsidered, for it was again announced before the convention assembled that he would not accept, and it was not until after he reached Philadelphia and found the demand for him so overwhelming that he concluded it was a party duty for him to yield.

Having urged him, as I had done the day before, I could not have changed my attitude without disagreeable embarrassment if I had so desired, but I had no desire to do so, and there was no occasion to do so. We parted, leaving the matter in just that way, where it stood when I had my talk with McKinley and told him I felt myself committed to support Roosevelt.

That the "McKinley people" did not want him prior to the convention was made tolerably clear to the average mind by an interview with Senator Hanna given out at New York and published in the Cincinnati *Enquirer* and other papers of May 11, 1900, in which the Senator said:

Governor Roosevelt will not be nominated for Vice President, and has not been discussed in that connection by Party leaders, or those who might speak for the administration. What has been said about him has been purely speculative from sources unacquainted with facts.

Notwithstanding the confident character of this interview, Senator Hanna changed his mind after he got to Phila-

delphia, and not only yielded to but joined in the demand for Roosevelt for Vice President.*

What occurred at the convention, the character of nominating speech I made and all other details of that occasion are a part of a great historic proceeding that need not be repeated here.

Suffice it to say that at the convention and afterward, down to the day of the election, I supported McKinley with all the zeal, sincerity and good-will it was possible for me to command; and that though there were, from time to time, questions arising about which we were not in accord, as from time to time there had been such differences from the beginning of our acquaintance, yet until the day of his death we continued personal friends.

It was my fortune to be called upon by him to give repeated evidences of the sincerity of my personal and political regard and good-will. These pages bear testimony to the truth of this statement.

At his request I not only nominated him for Governor, but also twice nominated him for President. Each time, in

* Further and conclusive proof that his nomination for Vice President was not favored, or *expected*, in administration circles has been given by the publication of the following letter dated June 15, 1900, from Mr. Hay to Henry White, in Thayer's "Life and Letters of John Hay," issued since the text was printed:

" . . . Teddy has been here; have you heard of it? It was more fun than a goat. He came down with a somber resolution thrown on his strenuous brow to let McKinley and Hanna know once for all that he would not be Vice President, and found to his stupefaction that nobody in Washington except Platt had ever dreamed of such a thing. He did not even have a chance to launch his *nolo episcopari* at the Major. That statesman said he did not want him on the ticket—that he would be far more valuable in New York—and Root said, with his frank and murderous smile, 'Of course not,—you're not fit for it.' And so he went back quite eased in his mind, but considerably bruised in his *amour propre*."

That Mr. Hay was something of a politician and one who did not propose to get lost, to refer to his own expression, is shown by the following letter published in the same work, written June 21st, only six days later, to Governor Roosevelt:

"My Dear Governor:—As it is all over but the shouting, I take a moment of this cool morning of the longest day in the year to offer you my cordial congratulations. The week has been a racking one to you. But I have no doubt the future will make amends. You have received the greatest compliment the country could pay you (*the nomination for Vice President*), and although it was not precisely what you and your friends desire, I have no doubt it is all for the best. Nothing can keep you from doing good work wherever you are—nor from getting lots of fun out of it. We Washingtonians, of course, have our own little point of view. *You can't lose us; and we shall be uncommonly glad to see you here again.*"

discharging these duties, as well as numerous others, when I had occasion to speak of him or his administration, I employed language of the most generous praise and commendation.

Mr. Croly refers to such efforts as "the part which Mr. Foraker was *obliged* to play on formal occasions as official *praise-monger* for the Administration," but McKinley never failed to express cordial appreciation.

Whether, like Hayes, he kept a diary, in which he secretly jotted down entries in conflict with what was on the surface, and thus has left something to justify such sneers, I do not know and have never taken any trouble to find out, preferring to believe that he was in all his intercourse with me as sincere as he professed to be and that he was in all his relations to me as frank as I tried to be in my relations to him.

If those who, claiming to be his friends, yet try to create the impression that he withheld from me in the slightest degree the confidence and high regard his various requests and commissions to be executed in his behalf indicated, only realized that if they could succeed in finding some scrap of evidence to justify such a contention, they would necessarily to that extent detract from McKinley instead of from me, they might be willing, in justice to the dead, if not from regard for the living, to allow the history of our relations to stand as he and events wrote it.

The propriety of their doing so is made more manifest when it is recalled that, while at their respective requests I rendered special, important and distinguished services of the highest and most dignified character not only to McKinley, but also to Sherman, Hanna and Taft, yet in no instance whatever did any one of them ever render any special service to me, nor did I ever solicit or request or intimate in any manner whatever that I desired any one of them to render me any special service of any character about anything, either important or unimportant.

In other words, when it comes to the matter of "carrying bricks and mortar" for each other, it will be found by all who are curious enough to examine the record that in each

instance I "handled the hod," and that consequently the obligations of this character were all upon them and none of them upon me.

While this is the record, yet I have never before mentioned it. I do not mention it now to claim any credit, for I did not do anything in any such instance at any time except what at the time I conceived it to be my duty to do; but only because it seems fitting that I should to the extent at least of a mere statement of the simple truth resent a lot of sneering aspersions that I know McKinley, Sherman and Hanna, each and all would, if they could, indignantly disown and denounce.

Mr. Croly no doubt discovered this, and had reference to it when, speaking of the factional divisions among the Republicans of Ohio after the National Republican Convention of 1888, he said:

On Mr. Hanna's side were ranged the whole group of Republicans who had been interested in Senator Sherman's nomination. It contained Mr. Sherman himself, Mr. McKinley, Benjamin Butterworth, Charles Foster and Mark Hanna. On the other side Mr. Foraker was the only Republican of ability and prominence. He was a proud, self-contained and self-confident man, whose nature it was to play a lone hand. He himself states that he never afterwards had a political ally with whom he was as closely associated as he had been for a while with Mr. Hanna. It speaks well for his skill in political management that he should have been able to hold his own against such a combination of popularity, effective power and political ability as Mr. McKinley and Mr. Hanna eventually constituted.

It is true, as Mr. Croly suggests, that I never had any alliances in politics of the character he mentions, but for a wholly different reason from that he gives. I hope I can truthfully say I was not unduly "proud," or egotistically "self-contained," or "self-confident," and that I had no ambitions that led me to prefer to "play a lone hand."

The simple naked truth is, that I was drawn into politics in the first place and kept there ever afterward by circumstances that made scheming and combinations, and plotting and planning wholly unnecessary, even if I had been willing to resort to them.

My strength was always in what I represented, and my combinations and organizations were only those voluntary responses that came from people who were in accord with the sentiments I expressed.

At the very time of which I am writing my re-election to the Senate was approaching. In my speech of acceptance made to the General Assembly following that event, speaking to men who knew the truth and to whom it would have been folly to make such a statement if it were not true, I said:

I have my fair share of enemies and detractors as every other public man has had since the beginning of the government, and will have until the end of time. It is not pleasant to have enemies, but it is a great satisfaction to be able to set down over against all they have said, or may say, the answering fact that of all the many honors it has been my good fortune to enjoy at the hands of the Republicans of Ohio, each one, without a single exception, has come to me with the same unanimity of expression and most of them by acclamation and without solicitation.

I attended McKinley's funeral at Washington and would have accompanied his remains to their last resting place except only that at the very hour of his funeral at Canton I spoke of him my last farewell words in Music Hall, Cincinnati, to an immense audience where I delivered the following memorial address:

(I quote from the Cincinnati *Commercial Tribune*, of Friday, September 20th, 1901.)

McKINLEY MEMORIAL.

Gathered in Music Hall yesterday morning was one of the most remarkable audiences that has ever been seen in this city—remarkable in its magnitude, remarkable in its representativeness, remarkable in its silence and reverence for the dead in whose honor it was gathered.

Long before the hour set for the meeting people congregated and sought admittance. Outside the iron fence that surrounds Music Hall a vast crowd surged back and forth, now threatening, now pleading, for admission.

About 7,000 people found places within the hall. More than that number were unable to gain admittance, and could only wait without

the walls and add their voices to the melody that came from the thousand throats within.

The organ recital came first, and in its solemn simplicity caused tears to start and voices and lips to quiver.

The brief, appropriate and touching address of Mayor Fleischmann, an address that was well timed and well delivered, in words that were well chosen and sensibly said, came next.

And then, with simple pathos the Catholic Festival Chorus rendered the martyred President's favorite hymn, "Lead, Kindly Light" in a manner that impressed one with the wondrous depth of feeling that can be imparted by the human voice, and of the solemn grandeur of a chorus like the one that sung that hymn.

"Lead, Kindly Light, Amid th' Encircling Gloom," welled forth from a thousand throats, while tears dimmed countless eyes.

The prayer by Rev. Davis W. Clark came immediately after the rendition of the hymn.

Following the rendition of "Nearer, My God, to Thee," by the chorus, Senator Foraker arose and advanced to the front of the stage. His voice was vigorous and penetrating, and every word that he uttered was heard in the farthest part of the hall.

The Senator had prepared his address in manuscript form, but he had to refer to the written words so seldom that it did not detract in any way from the effectiveness of his delivery. That he was much affected by the occasion was manifest several times during the delivery of the oration by a slight tremor in his voice—momentary, but nevertheless noticeable.

Those who heard the oration believe it to be one of Senator Foraker's greatest efforts. He said:

Mr. Chairman and fellow citizens: "In the midst of life we are in death."

Never was the truth of these words more strikingly exemplified than by the tragedy that brings us here.

In the vigor of robust manhood; at the very height of his powers; in the possession of all his faculties; in the midst of a great work of world-wide importance; in the enjoyment of the admiration, love and affection of all classes of our people to a degree never before permitted to any other man; at a time of profound peace, when nothing was occurring to excite the passions of men; when we were engaged in a celebration of the triumphs of art, science, literature, commerce, civilization and all that goes to make up the greatest prosperity, advancement and happiness the world has ever known; surrounded by thousands of his countrymen, who were vying with each other in demonstrations of friendship and good will, the President of the United States, without a moment's warning, was stricken down by an assassin, who, while greeting him with one hand, shot him to death with the other.

History has no precedent for such treachery and wickedness since Joab, deceitfully inquiring, "Art thou in health, my brother?" smote unsuspecting Amasa in the fifth rib and "shed out his bowels to the ground."

Imagination could not well picture a situation of greater apparent security than that by which the President was surrounded.

But what was all life and health and happiness one moment was turned to dismay, horror and death the next. Verily,

"Like a swift-fleeting meteor, a fast-flying cloud,
A flash of the lightning, a break of the wave,
Man passes from life to his rest in the grave."

The whole world is shocked, and Americans everywhere are humiliated, dazed and plunged into unspeakable grief and sorrow.

We can scarcely realize that such a crime was possible, much less that it has been actually committed, and our sorrow is yet too fresh, our grief too poignant and our indignation too acute for us to contemplate it dispassionately or discuss it considerably.

But while we can not now speak becomingly of the murderer and his awful crime we can fittingly employ this hour to commemorate the virtues of his victim, and to recount in part at least his great services to his country.

The allotted age of man is three score years and ten, but William McKinley was not yet fifty-nine when his career ended. In these short years he did a wondrous work. In its accomplishment he was unaided by fortuitous circumstances. He was of humble origin and without influential friends except as he made them.

A SOLDIER.

His public service commenced in 1861, when he enlisted as a private soldier in the 23d Ohio Regiment.

Among the officers of that command were an unusual number of men of ability and high character, who afterward attained great public distinction.

Rutherford B. Hayes, afterwards President of the United States, was one of them, and Stanley Matthews, afterwards an Associate Justice of the Supreme Court of the United States, was another.

These men were quick to note and appreciate the bright, frank, genial and zealous young boy who had placed his services, and, if need be, his life, at the command of his country, and it was not long until they promoted him to a Sergeantcy.

With responsibility, he developed and showed competency for something higher. One promotion followed another, all earned by efficiency and gallantry, until, at the close of the war, he was mustered out with the rank of Major.

IN CONGRESS.

In due time he was admitted to the bar and elected Prosecuting Attorney of his county. His professional successes were of the most promising character, but just when he had begun to feel assured of distinction in the practice of the law, he was again called into the public service and sent to Congress, where he served fourteen years with constantly increasing distinction, influence and usefulness.

He represented a manufacturing district, and on this account, as well as from natural taste and disposition, he gave particular attention to economic questions.

He was a thorough protectionist of the Henry Clay school, and soon became the leading advocate of that policy.

During all the years of his service in Congress the demands of our home markets were far greater than our manufacturers could supply. There was a constant importation from abroad to meet this deficiency.

It was his contention that our resources were practically unlimited; that the employment of our labor should be diversified as much as possible; that wages should be higher in this country than in any other, because our standard of citizenship must be higher; and that, therefore, it should be our aim so to legislate as to secure the development of our resources, the multiplication of our industries, and the ever-increasing employment of wage earners who would make a home market for the products of the farm, to the end that we might, as quickly as possible, supply all our wants and thus make ourselves independent of all other countries.

He contended, as did Garfield and all other orthodox tariff men, that the only way to ever reach free trade, or tariff for revenue only, as to articles of our own production, without injury to the country, was through the operation of the policy of protection, whereby we would, in time, reach the point where, fully supplying our own demands, we could go into the markets of the world to dispose of whatever surplus we might have.

As Chairman of the Ways and Means Committee of the House of Representatives, he embodied these views in a bill to revise the tariff and adapt it more perfectly to the conditions then existing, which was reported and passed, under his leadership, in 1890, after a protracted debate in which he gained great prestige by his successful championship of the measure.

THE MCKINLEY LAW.

The act was known as the McKinley law. It went into operation just prior to the elections of that year, at which time the country had not yet felt its effects.

It was bitterly assailed and denounced as increasing the burdens of taxation, and one provision in particular—that which, for the first time, made it possible to manufacture tin plate in this country—was both denounced and derided.

Taxation is always odious. It is easy to excite prejudice against any measure that is charged with its unnecessary increase.

It requires argument and practical results to meet such charges, and in this instance there was no time for either.

The result was that, aided by a congressional gerrymander, Major McKinley, the author of one of the greatest measures of the kind ever placed on our statute books, was defeated for re-election to that body in which he had served with such patriotism and distinction.

He was not alone in his defeat. There were crushing defeats for the Republican candidates all over the country. His measure seemed to be condemned, and from every quarter there came criticisms for its author.

It was a dark hour for protection, a dark hour for the Republican Party, and especially a dark hour for William McKinley. It was a time that would have made most men waver; but not so with him.

The defeat, so far as he was personally concerned, only brought out in clearer light his strong qualities, his splendid self-control, his confidence in his faith, and his sublime courage, with which the country has since become so familiar.

At the first appropriate opportunity he answered and silenced all criticism, not by defending, but by aggressively resuming the advocacy of his measure, and proclaiming that, in view of the debates and the results of the law, which he could foresee, and all would soon feel, he was more a protectionist than ever before.

The operation of the law quickly vindicated his judgment, and the next year the rejected Congressman was made Governor of Ohio as a reward for his services in securing its enactment, after a spirited campaign in which the chief decorations at political meetings were tin cups, tin plates, tin horns, and all kinds of tinware, displayed in honor of the magic-like establishment and success of the tin plate mills that marked the beginning of one of our greatest and most important industries, for which we are indebted to him alone.

GOVERNOR OF OHIO.

During the four years he held the office of Governor of Ohio "the stars in their courses fought for him."

The elections of 1892, resulted in the choice of a Democratic President, on a free trade platform, supported by a Democratic Senate and a Democratic House of Representatives.

Mr. Cleveland had scarcely been inaugurated when there commenced a most disastrous panic and business paralysis.

His party undertook to check it and restore prosperity by repealing the McKinley law and substituting what is popularly known as the Wilson-Gorman act, but this seemed to make matters worse rather than better, and the hard times continued without abatement or interruption.

By the time 1896 was reached the question uppermost in every man's mind was, How could prosperity be restored?

The Democrats said by free silver; the Republicans said by a return to the policy of the McKinley law.

That settled the issues and determined the candidates.

Long before the National Republican Convention met in St. Louis it was known who would be its nominee.

That body only registered what had already been decreed.

PRESIDENTIAL CANDIDATE.

The canvass that followed was one of the most exciting, most closely contested and most highly educational the country has ever known.

From the hour of his nomination until the hour of his victory, Governor McKinley bore the most conspicuous part.

His home at Canton was the daily scene of assembled thousands who came from all parts of the country to see their candidate and pledge him their devoted support.

To the visiting clubs and delegates he was almost constantly speaking. His addresses were marvels of clear and elegant expression; no two were alike; every one had some new thought, and all were helpful to his cause. Not an unwise word was spoken.

The reserve force, the sound judgment and the rare versatility he displayed gave the country an enlarged conception of his intellectual stature and gave him that control and leadership of his party so essential to the success of a national administration.

AS PRESIDENT.

The whole country realized that he was fitted for this great office, and that under his guidance we would be led by a master hand.

Expectation was justified.

His first official act was to convene the Congress in extraordinary session. In the usual way, he submitted his recommendations. They were promptly accepted and enacted into law. Instantly the spell of stagnation was broken; confidence returned; business revived and the country entered upon an era of prosperity without a precedent in the history of this or any other nation.

If this had been the full measure of his work it would have been sufficient to have endeared him to all the people and to have ranked him as one of our greatest and most successful Presidents; but it was only the beginning, only one chapter of a whole volume of mighty history.

His fame will be chiefly associated with his conduct of the Spanish-American war, the freedom of Cuba, the acquisition of our insular territories and the solution of the many difficult and far-reaching problems arising therefrom.

He did not seek war; on the contrary, he did all he could do honorably to avert it; but when it came he did not shrink from its requirements.

He met them with a purpose unselfishly consecrated to the honor and glory of the republic.

He was in reality, as in name, the commander-in-chief of the army and the navy of the United States.

He marshaled our forces on land and on sea and struck quick and hard and everywhere.

Not a regiment was organized, not a ship was put in commission, not a movement was made, not a battle was fought except with his personal knowledge, approval and direction.

The unbroken series of victories that crowned our arms and glorified our flag were his as well as those of our gallant soldiers and sailors.

There has been much acrimonious debate concerning the acquisition of the Philippines and the policy he has pursued there.

This can not be reviewed without trenching upon what have become partisan political questions, which some might object to the discussion of on this non-partisan occasion; but it can be said, without offending the reasonable sensibilities of any, that in it all he acted only from a sense of duty and according to his convictions of right and the obligations and interests of his country.

He died proud of his work in that respect, and in the just expectation that time will vindicate his wisdom, his purpose and his labors—and it will.

What he was not permitted to finish will be taken up by other hands, and, when the complete, crowning triumph comes, it will rest upon the foundations he has laid.

His great loss to the country will not be in connection with policies now in process of solution, but rather in connection with new questions. What he has marked out and put the impress of his great name upon will receive the unquestioned support of his own party and the great majority of the American people.

He had so gained the confidence of his followers and the whole country in his leadership that practically all differences of opinion on new propositions would have yielded to his judgment.

HIS LAST SPEECH.

The progress of events will not stop.

"Unsolved problems have no respect for the repose of nations."

New questions will arise—are arising—have arisen.

With his calm, clear judgment and foresight, he saw and appreciated all this. His last speech was a testimonial to this fact. It was in many respects the ablest, the most thoughtful and the most statesman-like utterance he ever made. It was the triumphant sequel to his long years of sturdy battle for a protective tariff; a complete vindication of all his predictions in that behalf, and, at the same time, a fitting farewell to the American people whom he had served so well.

Who can exaggerate the gratification he must have experienced in pointing out the immeasurable prosperity that has resulted from the energizing effects of the policies he had done so much to sustain?

Dwelling upon the fact that we had now reached a point in the development of our industries where we are not only able to supply our home markets, but are producing a large and constantly increasing surplus, for which we must find markets abroad, he reminded us that if we would secure these markets and continue these happy conditions we must not only maintain cordial relations with other nations, but must establish such reciprocal relations of trade as will enable them to sell as well as to buy, and that in this great work we should utilize the protective element of existing duties where it is no longer needed for purposes of protection.

Over the details there will doubtless be differences of opinion, but as to the general proposition, his words will live after him to speak with decisive authority.

Such is a brief epitome, imperfectly stated, of only some of the great public services of this great son of our great state.

But he no longer belongs to us alone. We long ago gave him to the nation, and the nation has given him to the world.

There is no place in all Christendom where his name is not spoken with admiration and cherished with affection.

The whole world mourns with us and pays tribute to his memory; not because of his public services, for they were rendered for America, but for the gentleness of his nature and the nobility of his character. In these respects he is without a rival since Sir Philip Sidney.

HIS PERSONALITY.

He was of splendid presence, of pleasing personality and of polished and graceful address. There was no court in Europe where his manner

and deportment would not have commanded the highest respect, and yet it was all so natural and free from simulation or affectation that he was always, without any sacrifice of dignity or change of manner, familiarly at home with Abraham Lincoln's common people of America.

He loved his countrymen and was never so happy as when in their midst. From them he constantly gathered suggestions and ideas and wisdom. The cares of state were never so exacting that he could not give consideration to the humblest, and his mind was never so troubled that his heart was not full of mercy.

HIS ORATORY.

As a public speaker he had few equals. His voice was of pleasing tone and unusual carrying power. He had it under complete control. He could adapt it perfectly to any audience or any subject. It was always in tune with the occasion. From one end of the land to the other he was constantly in demand for public addresses. He responded to more such calls probably than any other orator of his time. Most of his speeches were of a political character, yet he made many addresses on other subjects; but no matter when or where or on what subject he spoke, he never dealt in offensive personalities. He drove home his points and routed his antagonist with merciless logic, but never in any other way wounded his sensibilities.

MRS. McKINLEY.

The remarkable tale is not all told.

No language can adequately tell of his devoted love and tender affection for the invalid partner of all his joys and sorrows.

Amidst his many honors and trying duties, she ever reigned supreme in his affections.

The story of this love has gone to the ends of the earth, and is written in the hearts of all mankind everywhere. It is full of tenderness, full of pathos, and full of honor.

It will be repeated and cherished as long as the name of William McKinley shall live.

It was these great qualities of the heart that gave him the place he holds in the affections of other peoples. They claim him for humanity's sake, because they find in him an expression of their highest aspiration.

By common consent, he honored the whole human race, and all the race will honor him.

HIS RELIGIOUS CHARACTER.

But he was more than gentle.

He was thoroughly religious, and too religious to be guilty of any bigotry.

His broad, comprehensive views of man and his duty in his relations to God enabled him to have charity and respect for all who differed from his belief.

His faith solaced him in life, and did not fail him when the supreme test came.

When he realized the work of the assassin, his first utterance was a prayer that God would forgive the crime.

As he surrendered himself to unconsciousness, from which he might never awake, that surgery could do its work, he gently breathed the Lord's Prayer, "Thy Kingdom come, Thy will be done."

And when the dread hour of dissolution overtook him and the last touching farewell had been spoken, he sank to rest murmuring, "Nearer, My God, to Thee."

This was his last triumph, and his greatest. His whole life was given to humanity, but in his death we find his most priceless legacy.

The touching story of that death-bed scene will rest on generations yet unborn like a soothing benediction.

Such Christian fortitude and resignation give us a clearer conception of what was in the apostle's mind when he exclaimed, "O death, where is thy sting? O grave, where is thy victory?"

February 27, 1902, official memorial services were held in the House of Representatives. On this occasion both Houses of the Congress and all the officials of the Government, with many distinguished citizens of the Republic, were in attendance. The Honorable John Hay delivered the memorial oration.

The following illustration is a facsimile representation in reduced size of the official card of admission.



OFFICIAL CARD OF ADMISSION.

CHAPTER XXXV.

1901-1904

RE-ELECTED SENATOR—ENDORSEMENT OF ROOSEVELT
FOR PRESIDENCY—RE-ELECTION AND DEATH
OF SENATOR HANNA.

THE opening of the Ohio campaign of 1901 was delayed on account of the assassination and death of President McKinley until October 20th, when a tremendous meeting was held in the campus of the Ohio Wesleyan University at Delaware, Ohio. This meeting was addressed by Governor Nash, Senator Hanna and myself. The newspaper accounts estimated that the audience assembled in front of the speakers' stand numbered from ten to fifteen thousand.

Two or three days before this meeting was held President Roosevelt had brought upon himself a perfect storm of Democratic criticism, especially from the Southern States, by entertaining Booker T. Washington at luncheon with him in the White House. This criticism was at its height at the time of our meeting.

I was, perhaps, the first man to make public answer to it; at least the newspaper accounts of the Delaware meeting make this statement.

Preceding the formal opening the Columbus Glee Club serenaded the speakers of the day at the hotel where they were stopping. In response to a call for me I took occasion in the course of my remarks to say that our Democratic friends now had a new issue, one not set forth in their platform, because it had grown out of an occurrence subsequent to their convention. I went on to say the Democrats now wanted the Republican administration at Washington turned out of power not because of Imperial-

ism, the Spanish-American war, or anything done in Cuba, Porto Rico or the Philippines, or because of our opposition to the free and unlimited coinage of silver, or for any other of the many reasons they had been for many years urging against us, but because the new incumbent of the White House had courage enough and patriotism enough and a strong enough sense of equity and justice to know that the White House was the White House of the whole American people, of the American Negro as well as of the American white man; that in short Democratic sensibilities had been shocked by President Roosevelt inviting Booker T. Washington to lunch with him; that the offense was aggravated because Washington, at one time a slave, had, under the freedom and opportunity given to his race by the Republican Party, been able to acquire an education, establish a great industrial school and there successfully carry on a work of education and general qualification for citizenship that had excited the attention and the admiration of the whole body of loyal American citizens. I predicted that, although not in their platform, this complaint would be heard throughout the campaign, but that the more that was heard of it the more certainly it would be condemned at the polls; for the American people, instead of rebuking a man who had courage enough to recognize the equal rights of American citizens, would uphold and sustain and encourage him with a verdict at the polls that would be memorable in the history of American politics.

Speaking for myself I said, in view of his intellectual endowment, general culture and invaluable service to his race and his country, I would rather lunch with Booker T. Washington than with some Democrats I had known.

My Democratic opponent for the Senatorship was the Honorable Charles W. Baker of Cincinnati, a very brilliant and successful lawyer. In a speech made by him at Lancaster shortly afterward he referred to this statement and made, I thought, a very witty and "catchy" response by remarking that, so far as the Democrats were concerned, they, too, would rather have me lunch with Booker T. Washington than with them.

I mention these incidents not only because they belong in this narrative of recollections, but also because I was almost the only campaign speaker who thus publicly defended the President; and because such defenses as appeared in the newspapers and magazines seemed only to aggravate and intensify the fierce criticisms that were literally showered upon him, until by lapse of time and the occurrence of new incidents that commanded attention the event was, so to speak, relegated to the rear.

While on this account the incident largely passed out of the minds of the people generally, yet it is safe to assume that it had not yet been forgotten by President Roosevelt when in 1906 the Brownsville affray occurred.

He had relatives and friends in the South and had a great admiration for the chivalric character of the Southern people, and no doubt felt keenly their almost universal criticism and the apparent loss of their friendship and goodwill.

No one can say this had anything to do with his action in discharging the colored soldiers, but it was doubtless quite agreeable to him to see his fierce enemies suddenly become warm friends.

RE-ELECTED SENATOR.

Nineteen hundred and one was a Republican year, especially in Ohio. We had a majority of thirty-five in the Legislature on joint ballot, and without opposition I was chosen by the entire Republican vote to be my own successor; and this notwithstanding the fact that I was openly charged, both in the campaign and in the Legislature, with the heinous crime of acting as attorney for the great moneyed interests and trusts, on which account six years later, I was politically eliminated.

Mr. Baker, my opponent, was nominated by the Democratic floor leader, Mr. Clem. L. Brumbaugh, who said in the course of his speech: "Mr. Baker represents the principles of true Democracy. He is an attorney of great ability, but not the attorney of trusts. If sent to the

Senate he will represent the people, and not the great moneyed interests."

In other words, he was an attorney, but not in a way to hurt. Instead of representing railroads and corporations that were developing and carrying forward the great business interests of the country which, in the opinion of his nominator, would have disqualified him for the Senatorship, he had a good general practice based on the quarrels of litigants, divorce suits and criminal cases, and that, according to the same opinion, fitted him exactly for the public service.

OHIO ENDORSES ROOSEVELT.

With my election over and out of the way the next important event in Ohio politics was the Senatorial election to follow two years later in 1903. Senator Hanna was a candidate for re-election. He did not at any time have any opposition within the party. His continuation, during all the years that had followed since his first election, as Chairman of the National Republican Executive Committee, had given him a prominence as a political character such as no Ohioan had ever before enjoyed, and this political prominence, coupled with a strong mental endowment, sound judgment, zealous Republicanism and general devotion to duty, had won for him the esteem of all his colleagues and had enabled him to render services in the Senate to both his party and his country that were of the highest and most valuable character. But while everybody was not only satisfied but desirous that he should be his own successor there were thousands of loyal Republicans in Ohio to whom it had never occurred that he would be a suitable, or even acceptable, candidate for the Presidency.

It, therefore, excited attention and aroused opposition when certain of his recognized friends, those closest to him and apparently with best right to speak on such a subject, commenced talking, publicly as well as privately, in a deprecatory way of President Roosevelt, and with extravagant laudation of the fitness of Mr. Hanna for the executive office. I was of the opinion, and most of my friends were,

that Roosevelt as the successor of McKinley was modestly, but zealously and with sincerity and success, carrying out the policies of his predecessor and that his administration was so successful that he would be, under all the circumstances, the best candidate for the Republicans to nominate. It was well known that I entertained this opinion. I could not, therefore, avoid regarding it as a sort of challenge when, in formal interviews given out by Mr. Elmer Dover, the Senator's private secretary, Hon. John R. Malloy and Hon. Samuel L. Patterson, two of his most pronounced and dependable followers in Ohio, and others, it was stated that President Roosevelt was not popular with the Republicans of Ohio; that his occupancy of the White House was accidental and that there was no obligation growing out of custom to give him an elective term and that Senator Hanna was far better equipped for the Presidency and more popular, especially in Ohio, and that the delegation to the next National Republican Convention would, for these reasons, without doubt support Senator Hanna for the Presidency. The interviews to which I refer were published about the middle of May, 1903. I read them while on my way to the celebration held at Chillicothe, May 19 and 20, in honor of the centennial anniversary of the admission of Ohio to the Union.

On my arrival at Chillicothe I was appealed to by all the newspaper men for a statement in answer. In response I gave them the following, copied from the *Times-Star*:

I have no more interest in this matter than anybody else and I do not know why these interviews with Mr. Malloy, Mr. Dover, Senator Patterson and others should be put forth. I suppose they have their own sufficient reasons therefor. I am quite sure, however, that they are under some misapprehensions. If I am not very much mistaken the Republicans of Ohio are in favor of the nomination of Theodore Roosevelt as our candidate for the Presidency in 1904, and that they will be very much disappointed if we do not so declare at our State convention. We declared in 1887 in favor of the nomination of Mr. Sherman in 1888, and we declared in 1895, in favor of the nomination of William McKinley in 1896. We have at least two precedents, therefore, for such action. Of course, they were Ohio men, and the case is different in that respect from this case, but President Roosevelt has been long enough in public life and long enough in the Presidential office for the people of the whole country to have a correct estimate of him, and I think it is a pretty

nearly universal sentiment that he comes up fully to the requirements of the office and that under all the circumstances we will be stronger with him as our party leader in 1904 than we can possibly be with anybody else, for the simple reason that we can not succeed in the next Presidential contest without approving and standing upon the record his administration has made, and naturally in the advocacy and the defense of that administration we will be stronger with him as our leader than we could be if we were to deny him that honor.

But, aside from all this, Roosevelt has made a good President. He has been alert, aggressive and brilliant, and with it all he has been successful. When he first came into the Presidency a great many prophesied that he would prove "too quick on the trigger," and that he would make mistakes. He has been pretty "quick on the trigger," but he has not made any mistakes, and he has not been any "quicker on the trigger" than the public interests have seemed to demand. He has made some enemies, of course, as every other President did, but he is today the best known and the most popular man in the United States. He has been true to Republican principles and his administration has been conducted on a high plane, that has inspired confidence at home and commanded respect abroad. Many States indorsed and declared last year in favor of him as our candidate for 1904. Nearly all the Northern States will make similar declarations this year. I do not know of any reason why Ohio should not also declare in favor of him. Unless death or something wholly unforeseen and improbable occurs, he will be nominated by acclamation. For us to be holding back upon the theory advanced by one of the interviewers that by next year he may be "a dead one," whatever such a slang phrase may mean, would be to put Ohio in a false attitude. Therefore, while not knowing what the convention may do and having no desires on the subject of a personal or special character, yet I think it would be very wise for the Republicans of Ohio at the approaching State convention not only to indorse the administration of President Roosevelt, but also to declare their intention to support him next year, as our candidate for the Presidency.

Substantially the same statement appeared in all the papers, and from that time on until the convention was held at Columbus, June 4th, the wires were hot and the newspapers were hot and everybody in Ohio was hot on account of the one great absorbing question thus raised.

Some of Mr. Hanna's friends complained that I was taking advantage of him by raising an issue as to the endorsement of Roosevelt at a time when he, being a candidate for re-election to the Senate, was under a species of duress that made it impossible for him to oppose the proposition, as he would have done under other circumstances. There were a number of answers given at the time which I need only repeat now. In the first place I did not raise

the issue. It was raised by his own immediate personal and political friends and representatives. In the second place Senator Hanna himself gave out an interview in which he approved what his friends had said and added that there was a special reason why Ohio should not endorse anybody for the Presidency a year ahead of the Presidential year because he, being National Chairman, it would look like an improper use was being made of the influence of that position. In the third place, as to the question of duress, we were not without precedent. McKinley had been endorsed a year ahead of time, and in 1887 Mr. Hanna, and all the others who were now protesting against an endorsement in 1903 of a candidate for 1904, had favored endorsing Mr. Sherman as Ohio's candidate in 1888 at the Toledo convention of 1887, by which I was nominated for re-election to a second term as Governor.

Aside, however, from all these considerations Mr. Hanna's friends had precipitated an issue which it was of the highest importance for us to promptly meet and determine and it was, also, in my opinion, of the highest importance that it should be determined in favor of Mr. Roosevelt.

There were a great many reasons which I felt free to express at the time, but do not care to repeat now, when it is unnecessary, and when Senator Hanna is no longer here to speak in answer, as he was then. The controversy was a spirited one, but it did not involve any ill-will or call forth any unkind expression on my part toward Mr. Hanna or anybody else; not one can be cited. I had no personal interest to subserve but was anxious to promote the success of the Republican Party by doing what I thought its best interests required.

The character of the controversy is shown by the following Associated Press dispatch sent out from Cleveland, May 25th:

In this, Senator Hanna's stronghold, Roosevelt sentiment is running high, and there would be, even tonight, an outbreak against Senator Hanna only for the warm personal feeling that active Republicans have for him. Telegrams have come from all sections of the State to him from friends who say that he must widely misunderstand the sentiments of the party in Ohio and that he will ~~commit~~ his gravest blunder should

he attempt to force officeholders who are delegates to vote against the indorsement of the President.

Hanna has always been a bulldog fighter in politics, and has never quit on any point where there seemed to be a chance for success. His agents are all over the State now, encouraging the local bosses to stand by the party organization, which means Hanna. The most faithful of these agents, it is known, have telegraphed from Cincinnati, Dayton and Columbus that there is little hope of holding the delegates against Foraker on a Roosevelt resolution, and so tonight there is an element of doubt as to how far Hanna will go.

There is no doubt that if he could extricate himself from the situation he has created he would do so at once and let the State convention delegates act as they please. He has gone too far to retire, however, with any credit, and in addition some of his lieutenants advise him to stand upon his present policy while there is a chance to humble Foraker.

In addition Hanna's pride is hurt by the constant thought that his ascendancy in the State is threatened by the friendship between Foraker and President Roosevelt. Should President Roosevelt be re-elected, it is the belief of Hanna and his lieutenants that much of the Federal patronage would be placed as recommended by Foraker. This would be sufficient to swing from Hanna many of the active politicians who now recognize him as the supreme head of the party organization.

The failure of Roosevelt to ask for any favors at the hands of Hanna has intensified the feeling that Foraker is slated to become the active leader, and so this enters into the Ohio fight as much, perhaps, as any other factor concerning the endorsement of the President for next year.

Hanna has one advantage, inasmuch as more than one half of the delegates were elected to the State Convention before the Roosevelt issue became a question in the State. Delegates elected since that time from several counties hold office through the influence of Hanna, but even this may not induce them to vote against the known sentiment of their localities.

The action of the Stark County Republican Convention in Canton last Saturday unanimously indorsing the Administration of the President and instructing the delegates to vote for any resolution in his favor has been a hard blow to the Hanna men. Coming from McKinley's own home, it is all the harder. The Republicans of Toledo and Cincinnati, through their newspapers and in district meetings, have made it known to their delegates they want the President indorsed for nomination, and so the situation, as a whole, brings grief to Hanna and has all the elements of victory for Foraker.

While the foregoing dispatch was being read telegrams were passing between the President and Senator Hanna, of which the following are copies:

THE PRESIDENT,
Seattle, Washington.

The issue that has been forced upon me in the matter of our State Convention this year indorsing you for the Republican nomination next year has come in a way which makes it necessary for me to oppose such

a resolution. When you know all the facts, I am sure that you will approve my course

M. A. HANNA.

On receipt of this telegram the President gave out the following, and wired the substance of it to Senator Hanna:

WALLA WALLA, WASHINGTON, May 25, 1903.

HON. M. A. HANNA,
Cleveland, Ohio.

I have not asked any man for his support. I have had nothing whatever to do with raising the issue as to my indorsement. Sooner or later it was bound to arise, and, inasmuch as it has now arisen, of course those who favor my administration and nomination will indorse them, and those who do not will oppose them.

THEODORE ROOSEVELT.

The President knew the issue had not been forced upon Mr. Hanna, but that his own friends had deliberately, and with his approval subsequently, if not previously, forced the issue upon the Republicans of Ohio, and that Mr. Hanna's telegram was due to the fact that he and his friends had learned that defeat stared them in the face unless some way could be found to evade the clash they had invoked.

When Mr. Hanna read the President's telegram he gave out the following:

COLUMBUS, O., May 27.

I am in receipt of a telegram from President Roosevelt which indicates to me his desire to have the endorsement of the Ohio Republican State Convention of his administration and candidacy. In view of this I shall not oppose such action by the Convention, and I have telegraphed the President to that effect.

Mr. Hanna had not been in good humor for some time. This made matters worse with him.

It seems to be according to the nature of newspaper men to annoy the annoyed, and tease the irritated, particularly when the cause of such annoyance or irritation is not serious. This was particularly true of the newspapers with respect to this matter. They were immediately filled with all sorts of references to it, and its sudden and inglorious ending, that were disagreeable to the Senator and caused him to say

a great many offensive things, for which there was no excuse, except the latitude allowed on such occasions.

As an example of this kind of literature, and as a piece that gave him special annoyance, I quote the following from the Pittsburgh *Leader* of May 27th, 1903:

OLD MARK HANNA.

Up in the treetop triumphantly sat
 Old Mark Hanna.
 Says he, "there's a winner right under my hat
 Old Mark Hanna.
 Let no would-be President get in my way
 For the state of Ohio will do what I say,
 I've a grip on the boys and they've got to obey
 Old Mark Hanna."

One Foraker came on the scene and beheld
 Old Mark Hanna.
 Quoth he, "Self-esteem has excessively swelled
 Old Mark Hanna.
 He'll have to come down from that eminence high,
 For the cinch that he brags of is all in my eye.
 I for one am determined to taunt and defy
 Old Mark Hanna."

So he flashed up the Roosevelt boom, which surprised
 Old Mark Hanna.
 Since nobody had of its advent advised
 Old Mark Hanna.
 He viewed it with wrath and to Foraker cried:
 "Git away with you, boy; git a move on you; slide.
 Don't expect to entrap by such dodgery snide
 Old Mark Hanna."

Then Foraker gathered his friends to attack
 Old Mark Hanna.
 They all were anxious to thump and to whack
 Old Mark Hanna.
 But Mark merely grinned, and with devilish joy
 Said to Foraker, "Don't get too cocky, me boy.
 'Twill take somebody stronger than you to destroy
 Old Mark Hanna."

Just then came a message designed to distress
 Old Mark Hanna.
 By Teddy 'twas sent. He alone, could suppress
 Old Mark Hanna.
 He said, "I am onto your infamous plot
 And you'd better let up or I'll show you what's what."
 These terrible words overpow'ered on the spot
 Old Mark Hanna.

He dropped like a log. Stupefaction had seized

Old Mark Hanna.

Misfortune for once had relentlessly squeezed

Old Mark Hanna.

While the Foraker crowd hail with joy the rebuke

Which has floored him;—and call on the public to look

Very like thirty cents is that former grand duke

Old Mark Hanna.

SENATOR HANNA RE-ELECTED.

In politics, as in other matters, "all is well that ends well." Senator Hanna experienced some mortification, but he had a rich reward in the final result, which was all to his advantage. The Convention enthusiastically indorsed both him and President Roosevelt, and the Republicans of Ohio went into the contest with a solid, united front, fought a good fight, and won a great victory, of which Senator Hanna was the chief beneficiary.

It was his last battle and his greatest triumph.

From the beginning until the ending of the campaign I labored as zealously in his behalf as I could have done if I had myself been the candidate. I visited every part of the State, making everywhere I went the most effective speeches of which I was capable.

The following quotations from my speeches at Chillicothe and Washington C. H. will show something of the nature of the questions with which we were confronted, and the character of discussion we had with respect to them.

The Democratic candidate was Tom L. Johnson of Cleveland. He believed in the single tax theory of Henry George, municipal ownership of public utilities, a two-cent per mile passenger fare on the steam railroads and a three-cent fare for all electric street railways, except only his own, and advocated, whether he believed it or not, the proposition that the equitable power of injunction should be taken away from the courts with respect to all labor controversies. He was a man of ability, and an untiring, ceaseless worker in behalf of any cause he espoused. He and Senator Hanna had long been active political opponents.

They were as dissimilar in their political beliefs and aspirations as it was possible for any two men to be.

All Mr. Johnson's ideas had either been embodied in the platform on which he stood as a candidate, or were advanced and advocated by him in his campaign speeches.

At Chillicothe, after discussing the general political situation, the questions arising from our holding and governing the insular possessions acquired by the Spanish-American war, the tariff, and the many usual and hopeless differences of opinion among Democrats with respect thereto, I said:

The third special denunciation of the Democratic platform to which I have called attention is of what it terms

GOVERNMENT BY INJUNCTION.

This phrase expresses a very dangerous thought.

All the judicial power of our Government is vested by the Constitution in one Supreme Court and such inferior courts as Congress shall from time to time ordain and establish. The Constitution thus imposes upon Congress the duty of providing for the exercise by suitable tribunals of all the judicial power that belongs to the government. For Congress in the distribution of judicial power to fail or refuse to invest some court, somewhere, with the equitable power of injunction, would be to violate the Constitution and commit an act of revolution. For Congress to invest certain courts with that power, as has been done, and then divest them of it in whole or in part, as now proposed, without at the same time investing some other court with such power, would be equally a violation of the Constitution and an act of revolution.

But aside from all this, as a mere matter of policy, the proposition is the very essence of unwisdom.

The courts of our country have ever been the conservative and preservative force in our Government. They are the one department unmoved by the excitements and prejudices of the passing hour. No man is so humble but that, if he imagines himself aggrieved, no matter by whom, he does not know that in and through the courts his wrongs may be redressed, and who does not have in that fact an ever present assurance of the protection of Government for his life, liberty and property. There have no doubt been miscarriages of justice in the past, and there no doubt will be miscarriages of justice in the future, for nothing that is dependent upon human agency can be at all times perfect in its operation. But, taken as a whole, our Judges have always met the just expectations of our people, and in their independence, their honor, and their fearlessness in the discharge of their duties, we have ever found a comforting guarantee of the permanency of our institutions. No greater calamity could befall us than the serious impairment of the usefulness of this department of our Government. To deprive our courts of any part of their rightful jurisdiction would be at least a step in that direction. Only baneful results could follow. It might be

even the beginning of the end of the Republic, for men will not long maintain a government that does not sustain a free and untrammelled judiciary. All such propositions are not only revolutionary, but they are also anarchistic and must be dealt with accordingly.

There is another feature of this proposition that makes it still more reprehensible and inexcusable, and that is the demagoguery of which it is born. It is intended to capture the vote of the labor unions. On that account it is anything but a compliment to the intelligence and patriotism of laboring men. The true friend of labor unions is the man who will tell them the truth, and not the demagogue, who, prating of friendship, holds out false promises and elusive hopes of something that is unattainable. Every laboring man should know that naturally all men are his friends. In some form or other all must labor in this world, and humanity sympathizes with humanity the world over. But there are certain limitations in all human affairs, fixed in the very nature of things, beyond which sympathies will not go, no matter in whose behalf they may be invoked. This is especially true as to all Governmental affairs, and accordingly we find in the nature of our institutions natural limitations upon legislative remedies. Doubtless there have been instances of an erroneous use, or even an abuse of the writ of injunction, but the American people will not strip their courts of their wholesome and beneficent power to restrain threatened violations of personal and property rights to prevent the recurrence of such occasional wrongs. To do so would be a blow at vital principles. It is far better to leave the parties affected by erroneous judgments that may be given, to find their relief in the higher courts to which they may appeal, requiring us all alike to loyally abide whatever final judgment may be ultimately rendered. For no matter what may be said to the contrary, we all know that our courts honestly strive to administer equal and exact justice; and all should know that they who would strip them of their legitimate power place themselves in a bad light before the American people. When men find that they have purposes which are in conflict with the law as administered by our courts of equity, the best thing they can do is to abandon them, for it may be safely assumed that what an American court of equity will not allow should not be done. And the worst thing men can do, who find themselves in such a situation, is to join the Democratic party and attempt to make the judiciary of our country the football of party politics. For nothing is more certain than that the laws of this country and the courts that administer them will be upheld, and the political party that does not recognize this fact is unworthy to be entrusted with power.

At Washington C. H., after dealing generally with the political conditions, I discussed the Democratic candidate for Governor and some of his hobbies, especially the single tax theories of Henry George, which Mr. Johnson was earnestly advocating, after which I said:

He has a lot more propositions to offer you in this campaign; in fact there are so many I can hardly remember all. But he is going to require

by law that the railroads of the State shall not charge more than two cents a mile fare for passengers, without regard to the condition of the railroad or its earning capacity, and without regard to whether it is a completed road over which they are operating, or one as to which they are still engaged in its construction. Without regard, in other words, to the equity, justice and rights of other interests which may be involved.

. . . You have three or four railroads here. Your town is growing rapidly. . . . They are all in different states of completeness. The oldest of these roads, in all probability, is the most complete. A railroad is a railroad, I suppose, in one sense of the word, as soon as you have the roadbed made, the track laid down, and have commenced running cars over it, but it is not yet finished. . . . As time goes by, as newer and heavier cars come into use, they have occasion to change their bridges and strengthen them and make their tracks better adapted to more modern methods of travel and traffic, and there is constantly a requirement for the expenditure of money on account of that. Some of the railroads in Ohio are able to make their operating expenses, to pay the interest on their bonds, to pay all their fixed charges, and to pay a dividend on their stock; and some of them are not able to pay the interest on their bonds, and some of them that can pay the interest on their bonds are yet not able to pay dividends on their stock. I do not know how it is, but I doubt if any dividend has ever yet been paid upon your newest road, the Detroit Southern. I do not know what the fact is, but if it has not been it is simply illustrating the stages through which railroads have to pass. Some of the railroads are meeting all the demands upon them and making a surplus besides. But those that are making a surplus do not put that surplus in their pockets, or distribute it among their stockholders, or give their surplus to their officials; but every railroad in this country, during these times of prosperity when there is great travel and great traffic; every railroad that is making a surplus is, I think, without exception, expending that surplus to accomplish another purpose, in which we are all interested. When you want to go East to New York, or when you desire to go to Chicago or San Francisco, you want to know, when you take passage on a railroad, that you will be carried surely and safely, and the railroads of this country have been rightfully expending many millions of dollars of their surplus in the betterment and improvement of their property.

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If you will take a train and travel to Washington or New York over either the Pennsylvania or B. & O. or C. & O. railroad, or over any of these great railroads, trunk lines, that cross the continent, you will find that all of them are thus engaged in the expenditure not only of their surplus, but also the proceeds of securities which they are issuing upon the credit, which in these times they are able to command. They are enlarging and better and more safely constructing their tunnels. I came out from Washington a few days ago over the Baltimore & Ohio railroad, and almost every tunnel was receiving attention; being enlarged and newly lined; they were also double tracking, and lessening the grades on the road; in other words, improving the road in order to

make it, as nearly as possible, a safe road; one which the people of this country can travel over in safety, and not only which the people can travel upon, but over which the employes of the road can be carried safely while engaged in their occupation.

Now, this is a question that concerns not only every man who travels, but every man who is an employe of a railroad in this country, and there are tens of thousands of such men. We are all interested in travelling as cheaply as possible, but we are also interested in the safety of human life. We are all interested in having these great highways which are becoming, year by year, more of a necessity, made as nearly perfect, made as nearly safe, as human skill and enterprise can make them. This is a time when some of the railroads have a surplus, those that are prosperous, and they are employing it in that way. I remember there was a time when they did not have ability to do this work; and that was not very long ago either. During the second administration of Mr. Cleveland, as I went over the country, campaigning, and on other accounts, I did not have any trouble in getting a berth or a seat in a sleeper. I could get an upper or lower berth, or a whole section, or a stateroom; it was just like travelling around in a private car; there was no trouble in that regard during those times.

And there was no work being done on the railroads then; straightening tracks or enlarging tunnels or improving the equipment and providing further for the comfort of those that travel. Nobody had any confidence that made them put their hands in their pockets and take out the money essential to accomplish this great and necessary work. Now, if I want to go somewhere, I must apply three or four days beforehand, if I want to get even an upper berth. You may succeed at the last hour in getting accommodation, but if you want to be sure of it, you must go early. It is the early bird that gets the berth. (Laughter.)

So it was when the railroads did not have any surplus; everybody was too poor to travel at any price. But today we have prosperity. The farmer is busy; he has a market for all his products. The wage-earner is busy in the mill, the factory or the machine shop. Everybody that has labor or products to sell has a market, and the railroads are doing the greatest business in all the history of the country; and in the improvements they are putting upon their lines of railroad, they are doing a great good for the American people.

We do not want to make this impossible by forcing rates that are unfair and confiscatory.

I call attention to what I said about a two-cent fare for the reason that at the very moment when I do so (April, 1915) our Legislature is considering a bill to repeal that limitation, which was enacted in 1906, in spite of all that could be said against it, as a part of a wave of so-called progress and reform which was sweeping over the country. Its repeal is now proposed because experience has demon-

strated that a two-cent per mile passenger fare is a confiscatory rate,* which is not only interfering with the proper maintenance and equipment of our roads, but is rapidly driving them into bankruptcy; but sufficient and peremptory as these reasons are, it is plain from what is appearing in the newspapers that there are enough cowards and demagogues in Columbus to postpone this act of justice and necessity until still more injury is done, not only to the carrier, but to all who are carried. I take pride in recalling that neither Senator Hanna nor myself ever hesitated to speak out against the heresies and vagaries and isms of which such legislation was born, and that for a long time we had influence enough to prevent the success of such ideas.

SENATOR HANNA'S DEATH.

The decisive majority by which we carried the State was due largely to the personal popularity of Senator Hanna, but it was due more particularly to the thorough organization, the zealous campaign work he prosecuted in every county, and to the character of the issues the people were called upon to decide.

When the campaign was ended and an opportunity for relaxation came it was noted by his friends that the Senator had overtaxed himself and impaired his health by his arduous labors. He returned to Washington at the beginning of the December session of Congress and remained there until the 15th of February, 1904, when he died at the Arlington Hotel, where he was temporarily residing.

I quote from the *Congressional Record* as to the proceedings of the Senate the following day, February 16th:

MR. FORAKER: Mr. President, I have a painful duty to perform. It is that of making formal announcement of the death of my late colleague, Hon. Marcus A. Hanna. He departed this life in this city at

* The newspapers of July 8, 1915, carry a telegram from Chicago announcing that at the hearing, July 7, before the Interstate Commerce Commission sitting in that city, it was shown in support of the petition of forty-six railroads there represented that the predictions of the advocates of the two cent passenger rate that it would increase travel had not been realized, and that the rate had proven confiscatory.

the Arlington Hotel, where he had been residing during this session of the Senate, at the hour of 6.40 P. M. yesterday, surrounded by his family and immediate friends.

The event was not unexpected at the time when it occurred. For months past it has been evident to all who were associated with him that he was in failing health.

He was urgently and repeatedly advised to desist from his labors and make a special effort to resist his maladies, but his strong will power, hopeful nature, and fidelity to duty were such that he disregarded all such suggestions and continued at his post until about three weeks ago, when he was prostrated by typhoid fever.

His friends then became justly alarmed. That alarm spread throughout the country, and in response to unusual manifestations of public sympathy his physicians bulletined his condition daily, and, finally, almost hourly.

As the days passed hope failed, until all recognized that the "inevitable hour" was approaching.

Thus it was that the end did not come as a surprise, but the regret it has occasioned appears to be more profound and universal on that account.

His bereaved family have been the recipients of messages and telegrams of grief and condolence from all sections and from all classes.

He is mourned by all his countrymen—by his political associates not alone because he was their organizing leader who repeatedly led them to victory, but also and more especially because he had gained their affections and reigned in their hearts as a favorite; by his political opponents because they are so chivalrous and generous that they experience sorrow when a brave man falls, though he be of the opposition, and because they recognized in him a bold and fearless foe who commanded their respect and excited their admiration.

Here in the Senate, where he was so long a distinguished member, he was best known and most appreciated.

It is unnecessary to speak in this presence of the great loss his death has occasioned to his party, his State, and the Nation. All know it better than any language can express it.

Mr. President, this is not the time for extended eulogy. Later, I shall ask the Senate to set apart a day when all his colleagues can join with me in paying fitting tribute to his life, character, and public services.

For the present I content myself with offering the resolutions I send to the desk, for which I ask present consideration.

The President *pro tempore*: The Senator from Ohio submits resolutions which the Secretary will read to the Senate.

The Secretary read the resolutions as follows:

Resolved, That the Senate has heard with profound sorrow of the death of the Honorable Marcus A. Hanna, late a Senator from the State of Ohio.

Resolved, That a Committee of twenty-five Senators, of whom the President *pro tempore* shall be one, be appointed by the presiding officer to take order for superintending the funeral of Mr. Hanna, which shall take place in the Senate Chamber at 12

o'clock m. on Wednesday, February 17th instant, and that the Senate will attend the same.

Resolved, That as a further mark of respect his remains be removed from Washington to Cleveland, Ohio, for burial, in charge of the Sergeant-at-Arms, attended by the committee, who shall have full power to carry these resolutions into effect; and that the necessary expenses in connection therewith be paid out of the contingent fund of the Senate.

Resolved, That the Secretary communicate these proceedings to the House of Representatives and invite the House of Representatives to attend the funeral in the Senate Chamber and to appoint a committee to act with the committee of the Senate.

Resolved, That invitations be extended to the President of the United States and the members of his Cabinet, the Chief Justice and associate justices of the Supreme Court of the United States, the diplomatic corps (through the Secretary of State), the Admiral of the Navy, and the Lieutenant-General of the Army to attend the funeral in the Senate Chamber.

The President *pro tempore*: The question is on agreeing to the resolutions submitted by the Senator from Ohio.

The resolutions were unanimously agreed to.

The President *pro tempore* appointed as the committee under the second resolution, Mr. Foraker, Mr. Allison, Mr. Aldrich, Mr. Hale, Mr. Platt of Connecticut, Mr. Spooner, Mr. Perkins, Mr. Wetmore, Mr. Hansbrough, Mr. Warren, Mr. Fairbanks, Mr. Depew, Mr. Kean, Mr. Scott, Mr. Beveridge, Mr. Alger, Mr. Kittredge, Mr. Gorman, Mr. Cockrell, Mr. Teller, Mr. Bacon, Mr. Martin, Mr. Blackburn and Mr. McEnery.

Mr. Foraker: Mr. President, I move, as a further mark of respect to the deceased, that the Senate adjourn.

The motion was unanimously agreed to; and (at 12 o'clock and 12 minutes P. M.) the Senate adjourned until tomorrow, Wednesday, February 17, 1904, at 12 o'clock meridian.

Mr. Croly in a number of instances speaks as though Senator Hanna and I were in our private relations constantly at sword's points. Nothing could be farther from the truth.

From 1896 down to the end of his career we had our respective followers, and numerous factional fights in which each strove earnestly for success, and in connection with which harsh things were sometimes said, but in our private intercourse there was no interruption of our personal cordial relations.

It was not according to the nature or disposition of either of us to make much of a fuss over the other—or anybody else for that matter—but many social courtesies were

exchanged, and I had reason to believe from the cordial manner in which he always met me that there was no serious ill-feeling on his part toward me at any time, as I can truthfully state there never was on my part toward him; certainly no such feeling that was not openly expressed, but rather just the reverse.

When the usual memorial proceedings were had in his honor in the Senate Thursday, April 7, 1904, I told the story of our relations and expressed my estimate of his character and public services fully and in as simple and straightforward a manner as it was possible for one man to speak of another. What I there said is in the official record and need not be repeated here.

SENATOR CHARLES DICK.

In due time the Honorable Charles Dick was chosen to be his successor. He had been active in Ohio politics for many years. He had served as Chairman of the Republican State Executive Committee, and for a number of terms as a member of the House of Representatives. He had always been aligned with the Sherman, McKinley, Hanna, Taft factions, but I found him a very agreeable colleague, apparently anxious to harmonize all differences about appointments, and to consult and agree about all matters that required our co-operation.

In these respects he proved a great relief to me and I appreciated very fully and highly the friendly co-operative course it was his pleasure to take.

He did not participate actively in the debates, but he was faithful, prompt and efficient in the committee rooms, and soon took a good and well-deserved rank among his colleagues of both political parties.

He was defeated for re-election, not because of anything personal to himself, but because of the political disasters that overtook the party generally at that time.

Without knowledge on my part that he intended any such thing he wrote and published in the *North American Review* for May, 1908, an article in regard to myself of the most complimentary character.

I appreciated it more than I otherwise would because he wrote from the observation point of a long time factional opponent.

I quote from his article as follows:

. . . There is perhaps no figure filling so large a place in the public mind at present who is so much misunderstood. That is the penalty paid by a man who has been so absorbed in his professional and public duties that he has had little time or opportunity to make the acquaintance of the people at short range, or to correct misrepresentations concerning himself. Very warm-hearted and very approachable, coveting human friendships as among the best gifts that life furnishes, his absorption in the more serious duties of life has made it impossible for him to cultivate to the extent he has desired the acquaintanceship of the masses, as well as the comradeship of congenial spirits. To live in the realm of the intellectual implies a certain aloofness from the world in general, and Senator Foraker's life has been an intensely intellectual one. . . . Did not Senator Foraker hail from the State of Ohio, the State of William McKinley, who came later into public recognition yet was preferred before him, he would doubtless have been effectively urged for the presidency long before now. As long ago as 1888, when he was a conspicuous figure in the National Convention at Chicago, he had many ardent admirers who felt certain he was the logical man of the hour. As for himself, he was loyal to Sherman then, as he was to McKinley in 1896 and 1900, and to Roosevelt in 1904. He asked nothing for himself, but threw the whole force of his great influence and commanding personality into the conflict in behalf of his choice.

He has had many followers,—loyal, ardent and enthusiastic, and he has always been able to awaken the wildest enthusiasm among his adherents. He has not, however, so many intimates as some men in public life, partly because he has always been very domestic in his tastes and has been blessed with a surpassingly attractive home circle, but mainly because he has not needed intimates to help fashion his ideas and to assist in formulating his opinions as to public policies. In the first place, he has always been a staunch Republican, loyal to the principles of his party as laid down in its National platforms. To other issues as they arose he has applied a mind highly trained, an industry tireless in seeking the facts, a rare judicial acumen in weighing the evidence, and logic of the highest order in stating his conclusions. To these admirable qualities he joins the higher and rarer virtues of being absolutely honest with himself and a political independence which compels him to be honest and sincere with the public. His courage in the forum and before the public in general is not a whit less than it was in his boyhood days on the field of battle. . . .

If political elimination should be the reward of his independent stand on any public issue, he would accept his martyrdom as philosophically as ever did any victim of persecution, and find regret only in the fact that he had but one life to give for a cause. He cannot be deterred from supporting any cause he deems right, simply because it

may be unpopular. His course on the railroad-rate bill was an illustration. To paraphrase a well-known expression, it was magnificent, but not politics. He realized he was taking his political life in his hands when he decided on that course, but that made no difference. He believed he was right, and he was fearless in the fight he made.

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Foraker is today his party's ablest debater on the floor of the Senate, with few equals and no superiors in public discussion, and is always an antagonist justly to be feared. He never talks for the sake of talking, nor to hear the sound of his own voice, but from firm conviction that duty calls. He never talks lightly or without sufficient information, as many an antagonist has ruefully realized on attempting to cross swords with him. In debate, sledge-hammer blow and rapier thrust are alike at his command. He marshals all the forces of oratory, but relies most on crushing blows at his adversary's weakest point.

There is a vein of chivalry in his nature which leads him to champion the cause of the afflicted, the oppressed and the downtrodden. No cause is too humble to enlist the tireless support of his whole being. He espoused the cause of the black battalion discharged at Brownsville as zealously and fervently as he defended the railroads against the attacks of an almost unanimous public sentiment. He has not yet been convinced, and those who agree with him see no reason why he should as yet be convinced that he was wrong in either case. He made a successful fight against the forced union in Statehood of the Territories of New Mexico and Arizona. . . .

He has the advantage of a college training after his service in the army, and at an age when he could derive the greatest benefit from it. He has always been a student and a reader, fond of his books, but too busy to enjoy them always as he desired. He has never been a follower, but always a leader. Whether his following was great or small, it was loyally devoted to him, and no one has ever thought of him as enlisted under the banner of any one else. Like a baron of the feudal ages, he has always fought under his own banner and carried it into the thickest of the conflict.

Senator Foraker's career since he came to the United States Senate has confounded his enemies and justified the highest expectations of his friends.

He has never succeeded through organization, has never mastered or seemed to care for the details of organization. Those who refer to him as a machine politician do not know whereof they speak. He is not a candidate to be put in harness and led or driven by the word of a campaign manager. In the years during which he has been a prominent figure in Ohio politics he has never had a "machine," in the sense in which that word is used to describe a political organization carried down to the smaller political subdivisions. His trust has always been in the people. . . . He has suffered much because he has been misrepresented and misunderstood, being too busy doing the work which lay before him, and following the paths where he believed duty led him, to take the time and make the effort necessary to promptly correct wrong impressions gained by some as to his motives.

DEATHS OF GOVERNOR FOSTER AND GOVERNOR BUSHNELL.

It was a singular coincidence that almost contemporaneously with the death of Senator Hanna the deaths also of Governor Foster and Governor Bushnell should have occurred.

On his way to Columbus to attend the inauguration of Governor Herrick, Governor Foster stopped over night at Springfield with his old-time friend, General J. Warren Keifer. While thus visiting he was suddenly stricken and died the following day, January 9th, 1904, at General Keifer's residence.

Governor Bushnell attended the inauguration and was on his way to the depot to take the train for his home at Springfield when, while alone in his carriage, he was fatally stricken. Instead of taking the train he was taken to a hospital, where he died a few days later, January 15th, 1904.

To have two such distinguished ex-Governors of Ohio pass away so suddenly and unexpectedly at practically the same time gave a severe shock to the people of our State, which was still more keenly felt when Senator Hanna so quickly followed them.

These were all great men and good men.

They were often opposed to each other in our factional contests, but almost without exception they were warm personal friends until there came a break between Governor Bushnell and Senator Hanna in connection with Senator Hanna's first election to the Senate. Their names will always be associated in a distinguished and honorable way with the history of the State they served so long and so faithfully.

CHAPTER XXXVI.

JOSEPH BENSON FORAKER, JR.

SINCE dictating the foregoing chapter a deep sorrow has overtaken me and all my family. Our first-born lies cold and rigid in death; his marble-like face looking up to the stars he so loved to study.

For years I have cherished the thought that I had a strong staff to lean upon in my last days. Now it is broken, and the fond hopes and bright promises of a vigorous manhood are withered and scattered.

Friends were more than kind and hundreds of telegrams and letters expressing sympathy for the living and tender tributes of praise for the dead have been pouring in upon us from every direction.

His casket was literally embowered with floral pieces of the most beautiful design.

The dear Bishop who officiated spoke words of comfort and consolation and everything was done that could be suggested by the most sincere friendship and thoughtful kindness to assuage the grief of the hour. But all in vain! He is gone! Henceforth he sleeps with the dead—forever out of sight, but never out of memory.

His work seemed only begun, when like a young tree snapped by the storm he was cut down; yet he did not live in vain.

He leaves a precious memory that will forever teach to all who knew him patience, kindness and consideration for others.

Such a life cannot die. Its ending here is but the beginning yonder; for such a soul there must be a glorious rising on the shores of immortality, where all will meet again.

From earliest boyhood he was one of my closest companions. In the public schools, in the university, in the law school, in the law office, as the Secretary of the Senate Committee of which I was Chairman, and as a soldier in the Spanish-American war, his record was one of uninterrupted achievement, of which any father might well be proud.

He had a strong intellectual endowment, a remarkable memory—remarkable not only for its power of retention, but for its accuracy.

He delighted not in a close study, but in the acquisition of a general knowledge of most of the natural sciences—geology, mineralogy, chemistry — particularly astronomy. He was acquainted as though they were neighboring friends with the planets, constellations, and great central stars and suns of other solar systems. Their immensity, relative positions in the heavens, and their respective distances from the earth measured in miles and light years were as familiar as the map of the world with its great cities and territorial subdivisions.

He was in the same general way familiar, too, with the political history and governments of all the great nations, both ancient and modern.

In literature he delighted most in political history, but kept abreast with current events. During his last illness I found him, as I thought, unduly taxing himself with war news and magazine articles. I suggested that in his situation it might be better if he would spare himself somewhat in that respect. He rather vigorously for a sick man argued that he should not allow himself to stop such work because of his ailments.

He spoke of Lucretius and the beautiful tribute paid him by Ferrero, who said of him that, notwithstanding his physical difficulties and humble station, he yet wrote *De Natura*,—a work of such wonderful quality that it has lived and perpetuated his name through all the centuries that have followed as the author of one of the greatest literary achievements of not only his but of all time—



JOSEPH BENSON FORAKER, JR.

greater even than the achievements of his great warrior and statesman contemporaries.

He said he had been reading Colonel Roosevelt's narrative of his South American explorations and that his admiration had been increased for that remarkably versatile man by the fact that he carried with him a good-sized classical library and kept up his reading under all kinds of difficulties; mentioning how he did this on one occasion in some jungle where stinging flies swarmed about his party so thickly that they were compelled to wear veils over their faces and covers over their hands.

If Lucretius could work to such great purpose notwithstanding his infirmities and accomplish so much; and if Roosevelt could, under such forbidding circumstances, pursue his studies as a pastime, he might, at least, be allowed to pass his sick hours in company with favorite writers and in studying favorite subjects and in considering the interesting problems of the day. I desisted from further objection. And so it was always when occasion prompted him to discuss any of the general subjects I have mentioned, or any of many others I might mention, his conversation was of the most instructive and entertaining character.

He had no liking for personal participation in politics, and never sought any recognition there. The troubles and trials and labors of others which he had witnessed were frequently mentioned by him as an admonition to labor in other fields.

When he was only twelve or fourteen years of age he attracted the attention of Senator Hanna, who showed him many marks of kindness, friendship and good-will.

My correspondence with the Senator contains many references to him. He became the Secretary of my Committee in March, 1897. In that position he became well acquainted not only with my colleagues in the Senate, but with most of the important officials of the government from President McKinley and the heads of the Departments down to those in the subordinate bureaus, in which he had occasion to represent me in connection with the public business.

When the Spanish-American war came, without any suggestion from me and without my knowledge, President McKinley appointed him a Captain and Assistant Adjutant General of United States Volunteers upon the suggestion and recommendation of Senator Hanna and General Corbin, who was then Adjutant General of the Army.

He was assigned to duty on the staff of General James F. Wade, then in command of a corps at Camp Thomas, Georgia, the old Chickamauga battle ground.

Later, when General Wade was ordered to Cuba he went there with him as a member of his staff. Before leaving Camp Thomas it became his duty to take an important and conspicuous part in the transfer of the command of the troops there assembled to General J. C. Breckinridge, with whom I was not at the time acquainted, but from whom I was greatly gratified to receive the following letter, which gives some indication of the fidelity with which he discharged the important duties of his position:

CAMP GEO. H. THOMAS, GA., Aug. 19th, 1898.

HON. J. B. FORAKER,
Washington, D. C.

My dear sir:—

When I assumed command here I found your son, Capt. Foraker, acting as Adj. Genl., nominally of a corps, but in reality of this whole army composed of parts of two corps, artillery and cavalry. His knowledge of his duties and his performance thereof made me regard him as an efficient soldier. His welcome of me, and his cheeriness and kindness showed him to be an accomplished, clean bred gentleman and only the great pressure of duties incident to this command has kept me from writing you how high a regard he won from all those with whom he came in contact here. I, in fact all the staff here, were sorry to have him leave, tho' I sympathized with and approved of his desire to go where there was a chance to see more dangerous service.

With great regard, I have the honor to be,

Your obt. servant,

J. C. BRECKINRIDGE.

While in Cuba in company with a number of others assigned to a special duty he was exposed to yellow fever and was stricken with that dread disease. He was the only one of the whole number who escaped with his life. It was thought he had fully recovered, and it may be he had, but the physicians

who attended him in his last illness have expressed the belief that in that earlier battle, which was long, and for a time doubtful, were laid the foundations of the troubles that robbed him of his life.

However that may be, shortly after the war he quit his post at Washington to which I restored him on his return from Cuba and became associated with the Cincinnati Traction Company as one of its Directors and its Vice President.

He continued in this employment until the autumn of 1913, when he voluntarily, and despite the appeals of his associates to continue, resigned it that he might devote his time and energy more fully to some private mining interests he had acquired in Montana and some oil interests with which he had become identified in Oklahoma.

While engaged in these new undertakings he noticed for the first time that his health was becoming seriously impaired. He returned to Cincinnati for treatment; but it was too late. From early November until April 24th, 1915, with unflinching patience and courage he fought a vain fight.

In the last stages he sought the help of the sea; but again all in vain! The King of Terrors had marked him for his own and no mortal power could stay his purpose. At two o'clock in the morning in a cottage at Manhattan Beach he yielded to the inevitable and peacefully breathed his last.

The Cincinnati *Enquirer* of April 27th published the following account of his funeral:

VIRTUES

OF CAPTAIN FORAKER LAUDED AT HIS FUNERAL BY LIFE-LONG FRIEND, BISHOP MOORE—PATRIOTISM, DEVOTION TO DUTY AND LOVE OF LEARNING HIS CHIEF TRAITS, SAID PRELATE—SENATOR'S HOME THRONGED WITH FRIENDS—WEALTH OF FLOWERS.

Patriotism, an unswerving devotion to duty and an insatiable thirst for knowledge were the distinguishing characteristics of Captain Joseph Benson Foraker's nature, declared Bishop David H. Moore of Indianapolis, yesterday afternoon in his panegyric before the bier of the son of former Senator J. B. Foraker, at the residence of the latter, Madison and Grandin roads. Bishop Moore likened the broad life of Captain Foraker to that of his grandfather, Hezekiah S. Bundy, who had ably served his nation in the halls of Congress. "His grandfather lived to a mellow age; his grandson, so much like him in appearance and quali-

ties of manhood and scholarship, was cut down suddenly in his prime. As I once stood at the side of the silent figure of his grandfather, so I now stand at the bier of his grandson."

The Bishop read the services from a small wood-bound Bible, brought by his life-long friend, Captain Foraker, from the Holy Land. The house of mourning was filled with representative citizens, many from distant points. Huge floral designs and bouquets of spring flowers banked the casket, expressive of the sorrow of friends and the various military and other organizations of which he was a member.

INSPIRED BY FATHER.

In telling of the patriotic, scholarly and manly qualities of Captain Foraker the Bishop declared that the useful life of the father, Senator Foraker, was the inspiration of his son's career. He mentioned that the brother of the deceased, Arthur Foraker, attained his twenty-third birthday on this day of grief. Brief private services were conducted at the Spring Grove vault.

Delegations were present from the Loyal Legion, Spanish-War Veterans, the Daughters of the Revolution, of which Captain Foraker's mother is a member, and other organizations. The members of the family who came from Washington to attend the funeral will return within a few days. The remains arrived in the morning from Manhattan Beach, N. Y., where Captain Foraker passed away after a futile quest for health.

Captain Foraker never held any political office. He served as his father's secretary until the Spanish-American War broke out, and after active service became Vice President of the Cincinnati Traction Company. He was also a Director in many concerns.

The pallbearers were W. A. Stuart, Louis J. Hauck, Harry M. Levy, John Omwake, W. Kesley Schoepf, W. W. Ramsey, J. M. Hutton and William Ottmann, of New York.

The *Enquirer* published also immediately following its account of the funeral the following lines written by Mr. Francis B. Gessner, a well-known newspaper writer, a personal acquaintance and a friend of many years:

A TRIBUTE.

By Francis B. Gessner.

Those who knew best thy father love for son,
How fond, how watchful of his work and ways,
And justly proud of each achievement won
From boyhood on to splendid manhood's days,
May to the Lord cry out "Thy will be done,"
Yet wonder in affliction's blinding maze,
While humbly bowing to the Lord's decree,
Why son, first born, so well beloved, should die.



MRS. JOSEPH B. FORAKER.

Just as his manhood meant so much for thee.
Yet thy great grief recalls of Job his cry
That "God makes sore and woundeth, yet heals up
With soothing touch and drying up of tears."
Though bitter now may be the chastening cup,
A solace for the stricken soul shall come with passing of the
years.

Out of hundreds of the most beautiful letters and telegrams I cull the following as typical of all:

Mr. Robert I. Todd, President of the Indianapolis Traction & Terminal Company, formerly associated with Benson as an official of the Cincinnati Traction Company, wrote:

Benson possessed one of the brightest minds and keenest intellects that I have ever known. To his rare mental traits were united a most lovable personality and charming character that endeared him to all.

The Rev. Henry Melville Curtis, for years in charge of one of the leading churches of Cincinnati, now retired and living at Dublin, Ohio, wrote among other things:

I had for him a genuine admiration because of his marked manliness, and courtesy at all times, and his large-heartedness toward everyone. His genial manner and hearty greeting won the regard and confidence of all who met him; his consideration for his employees has been frequently mentioned to me by many of the street car men.

The Honorable Wade H. Ellis of Washington, D. C., wrote:

I have known him from boyhood. His was a sweet, brave, generous nature. I do not believe there is a man among all his acquaintances who is not sincerely saddened by this morning's news.

The Honorable Robert Laidlaw, one of the most prominent of Cincinnati citizens, wrote:

I got to know him very well and was very fond of him. It is too bad that such a fine young man should be taken. He was much beloved by his host of friends and will be greatly missed, but the loss to all of us is nothing compared to the loss you and your dear wife must feel.

Judge Ferdinand Jelke, Jr., wrote:

I have known Benson as long as I have known you—that is about thirty years—and have very vivid and pleasant recollections of him as a boy and man. In common with his many friends, I loved him.

General C. S. Warren of Butte, Montana, wrote:

I loved him as though he were my own son. I have never been associated with a man who possessed the manly virtues to the extent that he did. He was honorable, upright, fair and square to every human being whom he came in contact with.

Benson was a universal favorite with everybody who knew him in this country, and all express sympathy for you and yours in your bereavement. Every member of my own family feels as though we had lost one of our own.

President Alston Ellis of Ohio University, at Athens, O., of which Benson was for years a Trustee, wrote:

I regret more than words can express, the loss the Ohio University has sustained in the untimely death of your son. The announcement of his death, which came to us in newspaper report, was indeed a shock to his friends in Athens, although it was known here, pretty generally, that his health was impaired.

Had the funeral been public, and had notice of the same been received in time, Board members would have been selected to represent the University. No notice of any kind was received, save that which was reported in the press.

In behalf of my fellow-members of the Board of Trustees, I send you and your wife, in their name, sincere expressions of sympathy in the bereavement that has come to you in the death of your son.

As a Trustee of Ohio University, he made a creditable record, gained the esteem of all his fellows, and left vacant a place that will be hard to fill.

Joseph Wilby, Esquire, one of the attorneys of the Cincinnati Traction Company, wrote:

It was my good fortune to have known him well in recent years. He was one of the most lovable men of my acquaintance; a fine man and a good friend.

Mr. Clarence Price, formerly of Cincinnati, but now of New York, wrote:

All who knew him loved him and grieve with you in your great loss.

The Honorable George P. Waldorf of Toledo, Ohio, wrote:

His lovable nature was so well appreciated by everyone who came into contact with him, from his youth up, that his untimely demise will cause a pang of regret to a host of friends.

The Honorable James A. Green, one of the leading business men of Cincinnati, said:

I remember Benson since he was a boy of ten years old. Have always known and appreciated his great ability. He was equipped for tremendous things, and his early death is only another one of the mysteries that are beyond us.

Mr. Ralph A. Holterhoff wrote from Fortress Monroe, Virginia:

Your son's cordial manner and cheery optimism attracted and held a multitude of those who were proud to have been known as his friends, and who will cherish his memory as an intimate and enduring personality.

And so I might go on with scores of other similar communications, all of the same general character, and all from leading citizens in their respective communities, but I have given place to enough to show that the warm tributes to his abilities, his lovable nature, and his general high character published in the newspapers were shared by all who knew him. That much is due him and that is sufficient.

CHAPTER XXXVII.

THE PANAMA CANAL TREATIES.

ONE of the most impressive object lessons of the Spanish-American war was given when the Oregon, stationed on the Pacific Coast, was needed on the Atlantic Coast to help resist Cervera's fleet, and found it necessary to sail 10,000 miles around Cape Horn to join her sister ships of the navy.

It started a fresh discussion in favor of an Isthmian Canal. This discussion resulted in the negotiation of a treaty known as the first Hay-Pauncefote Treaty, which was sent to the Senate by President McKinley, February 5, 1900. This treaty was not satisfactory to the Senate. It was amended in two or three respects with a view to making it so, but the British Government refused to accept these amendments. Subsequently a second Hay-Pauncefote Treaty was negotiated substantially in harmony with the first Treaty as amended.

The second Hay-Pauncefote Treaty was ratified by both Governments, and under it, and under contemporaneous legislation on the subject, the Canal was constructed and put into operation by the United States.

When it was nearing completion a question arose as to our right to fortify; and after its construction was completed and it was put into operation a more serious question arose as to whether we had a right in the use of that canal to discriminate in favor of American ships.

I was a member of the Foreign Relations Committee at the time when the two Hay-Pauncefote Treaties were negotiated and participated in the discussion of both of them in the Committee, and also in the Senate.

As to the question of our right to fortify I fully expressed my views and stated the facts of which I had personal knowledge on which those views were based in a letter to President Taft, of which the following is a copy:

CINCINNATI, O., January 2nd, 1911.

Dear Mr. President:—

In view of the controversy that is going on in the public press and elsewhere and otherwise with respect to the right of the United States to fortify the Panama Canal, I take the liberty of sending you the following for what it may be worth, if worth anything at all.

The first Hay-Pauncefote treaty was sent to the Senate by President McKinley February 5, 1900. It was ratified by the Senate with certain amendments, one, the following offered by Senator Davis, namely:

"It is agreed, however, that none of the immediately foregoing conditions and stipulations in Sections numbered 1, 2, 3, 4 and 5 of this article shall apply to measures which the United States may find it necessary to take for securing by its own forces the defense of the United States and the maintenance of public order."

A second amendment adopted by the Senate was the insertion in Article II after the words "Clayton-Bulwer convention" the following: "which convention is hereby superseded." I offered this amendment; but as I offered it I used the word "terminated," for which the word "superseded" was substituted on the motion, or rather on the suggestion of Senator Spooner. I remember asking him what difference he thought there was in the legal effect of the two words that he should prefer "superseded" to "terminated." He said he thought in legal effect there was no difference, but that he thought "superseded" was a "softer" word. Thereupon I accepted "superseded" for "terminated" and in that form the amendment was adopted, first by the Committee on Foreign Relations and then by the Senate.

A third amendment was made in the same way on my motion to strike out the whole of the third article of the treaty, which read as follows:

"The high contracting parties will, immediately upon the exchange of the ratifications of this convention, bring it to the notice of the other powers and invite them to adhere to it."

Confirmation of these statements is found in the leading editorial of the *Literary Digest* for December 22, 1900, where it is stated that:

"The temper of the Senate was first made evident by its adoption of the Davis amendment (passed by a vote of 65 to 17) permitting 'measures which the United States may find it necessary to take for securing, by its own forces, the defense of the United States and the maintenance of public order.' Two other amendments were proposed by Senator Foraker, and accepted by the Committee on Foreign Relations, the first declaring that the Clayton-Bulwer treaty is 'hereby superseded,' and the other eliminating Article III,

which provided that the other powers should be invited to adhere to the treaty."

This treaty thus amended was ratified by the Senate December 20, 1900, but the British Government rejected it.

During the time the treaty was pending and under discussion in the Senate there was a good deal of criticism of Mr. Hay in some of the newspapers, because of the provision of the treaty against fortifying the canal. After the Senate amended the treaty and particularly after the British Government rejected it in its amended form this criticism became more general, and on the part of many papers was very harsh and severe. Mr. Hay felt these criticisms keenly. They greatly mortified him.

At this time he came, one Sunday morning, to my residence on Sixteenth street. He seemed distressed and discouraged. He brought with him a letter he had received from Lord Lansdowne, which he asked me to read. It was a letter indicating that it would not be worth while to make an effort to negotiate another canal treaty unless we would make it a sort of omnibus affair in which should be incorporated provisions for the settlement of all the then unsettled controversies pending between the United States and Canada. Mr. Hay regarded such a treaty impossible and thought it barred further progress with respect to the canal, for the time being at least.

We drifted into a general discussion of the whole subject.

Having participated in the consideration of the former treaty I knew what the feeling was in the Senate, and that it would be idle to undertake to secure the ratification of any treaty that flatly prohibited fortification by the United States, or involved us in any obligation to consult and secure the consent or co-operation of any government as proposed in Article III of the former treaty. The first treaty had been ratified by the Senate only because Senator Davis's amendment was regarded as practically nullifying the provision against fortifications, and because the other amendments cut us loose from the Clayton-Bulwer treaty and exempted us from all requirements to consult or co-operate with other nations. So far as fortifying was concerned, the Davis amendment was regarded as leaving that whole matter practically speaking at the option of the United States. Finally I told him I thought the Senate would ratify a treaty in substantial accordance with the old treaty with the following exceptions or changes:

First. Supersede the Clayton-Bulwer treaty.

Second. Strike out the whole of Article III.

Third. Strike out the provision of Section 7, Article II, prohibiting fortifications. This would remove the objections of the Senate.

Fourth. Strike out Senator Davis's amendment, which had been adopted as the offset of the anti-fortifications clause, which would remove the chief objection of the British government.

Fifth. Transpose the following provision:

"The United States, however, shall be at liberty to maintain such military police along the canal as may be necessary to protect it against lawlessness and disorder,"

from Section 7 of Article II, where it followed the clause prohibiting fortifications, to Section 2 of Article II (old treaty), and there insert it, so that Section 2, Article II, would read as follows:

"2. The canal shall never be blockaded, nor shall any right of war be exercised, nor any act of hostility be committed within it. The United States, however, shall be at liberty to maintain such military police along the canal as may be necessary to protect it against lawlessness and disorder."

Mr. Hay had with him a copy of the first Hay-Pauncefote treaty, as amended by the Senate. He handed it to me and asked me to indicate on the copy just what I had suggested. Thereupon I took his copy of the treaty and struck out the clause prohibiting fortifications; and struck out the Davis amendment; and struck out Article III; and struck out from Section 7 of Article II the clause authorizing the maintenance of military police along the Canal and wrote it into his copy of the treaty as a part of Section 2 of Article II. Mr. Hay read and studied the treaty carefully, as thus amended, and then took it away with him, expressing himself as greatly pleased. He said he had hope that Lord Pauncefote and the British Government would agree to a new treaty framed in accordance with these suggestions.

Later I received the following letter from him, in the publication of which, although then confidential, there is I suppose no impropriety at this time:

WASHINGTON, August 23.

"*Dear Senator:*—It gives me great pleasure to inform you in the strictest confidence, that I hope to conclude a new Canal Treaty with England, which will embody all the essential ideas of the Senate amendments, and especially all the suggestions which you kindly made me last spring. I put them all in my draft although I thought I might have some trouble in carrying them through. But the British Government have shown a very fair and reasonable spirit, and I sincerely hope we may now get a treaty by December which will be even more acceptable to the Senate than the one they ratified last winter.

"Please regard this is (as) entirely confidential.

"Yours faithfully,

JOHN HAY.

"THE HONORABLE J. B. FORAKER."

When, subsequently, in December, 1901, the second Hay-Pauncefote treaty was sent to the Senate it was found to be in exact accord, on all the troublesome points, with the suggestions I had made as above shown.

The treaty as it thus came to the Senate was promptly ratified, without any amendment, and in due time ratified by the British government, and became a binding convention.*

*The publication since the text was printed of Thayer's Life of Mr. Hay gives confirmative proof of Mr. Hay's disappointment and discouragement because of the failure of the Senate to

As to fortifications it was my thought in suggesting that the treaty be put into the form in which it was put and ratified, that striking out

accept and ratify the first Hay-Pauncefote Treaty, and imparts information in that connection as to the "true John Hay" of a very surprising character; to me at least.

It shows that Mr. Hay was not only pessimistic and opinionated, but full of misinformation and false impressions as to the disposition of the Senate toward himself, for it shows that he somehow got the notion that the Senate was actuated in making its amendments by a spirit of spite and unfriendliness with respect to him prompted by "ignorance," "incompetence," and almost every other lack of qualification a man blessed with a rich vocabulary and prompted by virulent resentment could name; all of which was very unlike the quiet, urbane and affable Mr. Hay whom I knew.

The following extract from a letter he wrote March 7, 1900, to Joseph H. Choate is a fair sample of numerous others:

" . . . It is a curious state of things. The howling lunatics like Mason and Allen and Pettigrew are always on hand, while our friends are cumbered with other cares and most of the time away. 'W' has been divorcing his wife; Morgan is fighting for his life in Alabama; Cullom, ditto, in Illinois; even when Providence takes a hand in the game, our folks are restrained by 'Senatorial Courtesy' 'from accepting His favors.' Last week 'X' had delirium tremens; Bacon broke his rib; Pettigrew had the grippe; and Hale ran off to New York on 'private business' and the whole Senate stopped work until they got around again. I have never struck a subject so full of psychological interest as the official mind of a Senator."

The author proceeds:

"During the next month Hay watched with alternate resentment, sarcasm and regret the Senate at work spoiling, as he thought, the treaty, by amendments. At last when the amended measure passed, he sent his resignation to the President," which the President refused to accept.

The author comments as follows:

"To understand Hay's almost morbid depression at the failure of his Treaty, we must remember that he regarded the securing of that compact of supreme importance, both for carrying out American Imperial Destiny and for the binding together of England and the United States."

But concludes as follows:

"We can see, however, that they (*the Senate*) were wiser than he. If the United States were to build, own and direct a Canal—and that was Hay's desire—no treaty should be ratified which left any doubt as to their rights; and such a pledge as that which bound them not to fortify the Canal, ought not to be made."

In numerous other letters Mr. Hay is shown to have spoken in a disparaging way of the Senate as a body, and of Senators individually as incompetents, who are "hostile and actuated by ill-will" toward him personally in dealing with the great international questions presented by the treaty he had framed.

In all this he was grossly mistaken. There was never at any time on the part of any Senator of either Party any personal ill-will toward Mr. Hay, of which there was any indication in the Senate, and if there had been such ill-will, I am sure, no Senator there would have been influenced by it.

The author concludes his presentation of the personal opinions and disposition of Mr. Hay by saying that Mr. Hay was greatly elated over the success of his second Hay-Pauncefote Treaty; that he wrote "the British Government have shown a very fair and reasonable spirit"—evidently quoting from Mr. Hay's letter to myself, copied in my letter to President Taft, and adding "*Secretary Hay himself was converted to the matter of fortifying the canal.*" . . .

He further adds "Hay was naturally elated because although this treaty (*the second*) differed widely from that which he first framed, it contained two provisions which he deemed essential, the

Washington
Aug 23. 1901

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Yours faithfully,

John Hay

The Hon. J. B. Foraker,

all reference to fortifications and defense, but providing for our control, and providing affirmatively for the maintenance by us of a military police force, the number and character of which were entirely at our option without any limitation or restriction whatever, was the equivalent of acknowledging the right of the United States to protect our property in any way we might see fit to protect it so far as a military police or force might be concerned. It would follow as a matter of course that

abrogation of the Clayton-Bulwer Convention and the acknowledgment that the United States should control undisturbed the building and operation of the Isthmian Canal."

In other words, precisely what was accomplished by the two amendments offered by me to the first treaty, and adopted by the Senate; and precisely what Mr. Hay in his conference with me at my residence, as narrated in my letter to President Taft, said he would undertake to bring about in the negotiation of a new treaty.

In other words, again, Mr. Hay reached the point where he recognized that as to the first treaty the Senate was right and he was wrong,—that what the Senate wanted was an American Canal instead of a British-American Canal, and that what we needed and should have was an American Canal. As soon as he reached this point his displeasure with the Senate passed away and he became once more both happy and popular.

Mr. Thayer shows that his criticisms of the Senate were renewed, however, when, later, it refused to abdicate its treaty-making power in connection with the Arbitration Treaties. No argument is needed to establish that the Senate was right and Mr. Hay wrong in both instances when privately he indulged in such outbreaks.

The truth is that there are many things in Mr. Thayer's book that might have been omitted without any serious loss to either history or literature. These letters are only a part of much more found in Mr. Thayer's book that must militate against the justly earned fame of the great Secretary of State. What good purpose can be served by publishing at this late date unworthy criticisms, made in a moment of pique and disappointment, of a co-ordinate power of the Government, which Mr. Hay himself, later, according to his biographer, confesses were erroneous is hard to tell. But worse than all else is his account of Mr. Hay's visit to Gettysburg with Mr. Lincoln on the dedicatory occasion.

Mr. Thayer takes pains to show that Mr. Hay in his diary noted with care a number of inconsequential matters, some of them under the circumstances not very creditable; at least, grossly inconsistent with the sacred and solemn dignity of the occasion, to the nature of which he fails to make any reference whatever; dismissing even Mr. Lincoln's speech with only a commonplace allusion to it that shows he had no appreciation whatever, although a man of fine literary qualities and the highest order of patriotism, of the wonderful character of the utterances to which he had listened.

His Gettysburg notations may possibly be excused on account of age, for he was still a very young man, but what good can come from publishing such matters when they but call for apology and defense?

It is a pity to have such an excellent book as Mr. Thayer has published marred by such passages; especially so when they do not represent, but grossly misrepresent, the real character of Mr. Hay. His worst enemy could not have done him a greater wrong.

If want of space did not prevent I might inquire about a number of passages and make some comments, but I content myself with simply inquiring, hoping some one will sometime answer what good purpose was served by publishing that Mr. Hay, after a conference with McKinley at Canton, just before his election, wrote that his mask, having evident reference to his face, reminded him of "a genuine Italian ecclesiastic of the fifteenth century." He could hardly have been expecting at that time to have received the great honors McKinley conferred upon him; but doubtless the mask improved on acquaintance!

any military force stationed on the Canal would have a right to do whatever was necessary in the way of intrenching itself, or, in plainer words, fortifying itself against attack, and the idea was that with the canal constructed at a cost of hundreds of millions of dollars to the United States, and the United States in possession, occupying a Canal Zone or strip, as was then contemplated, over which it had exclusive jurisdiction, no one would ever question our right to do whatever might be necessary in our judgment to uphold our authority and protect our property and commercial rights.

Accordingly, when, after the ratification of the treaty, the Spooner Law, providing for the construction of the Canal, was enacted, June 28, 1902, it not only provided for the acquisition of the right of way and our jurisdiction over it, but it also provided, among other things, as follows:

"and he (*the President*) shall also cause to be constructed such sufficient and commodious harbors at the termini of said canal, and make such provisions for defense as may be necessary for the safety and protection of said canal and harbors."

The British Government did not make any objection or take any exception to this provision so far as I know.

Later, November 18, 1903, the United States entered into a treaty with the Republic of Panama, by the 23d Article of which it was provided:

"If it should become necessary at any time to employ armed forces for the safety or protection of the canal, or of the ships that make use of the same, or the railways and auxiliary works, the United States shall have the right, at all times and in its discretion, to use its police and its land and naval forces or to *establish fortifications for these purposes.*"

Neither the British Government nor anybody else took any exception to this provision in this treaty so far as I am aware.

I supposed, and I think other Senators were of the same opinion, that the British Government recognized and understood when the second Hay-Pauncefote treaty was ratified, in the form in which it was negotiated, that the Clayton-Bulwer treaty had been completely abrogated or superseded; and that the United States had a perfect right to construct and maintain the canal without any co-partnership relations with respect to it with Great Britain or any other nation; and that the United States also had the right to make suitable provision, such as, in its judgment, might be necessary for the maintenance of law and order along the route of the Canal and throughout the territory over which the United States was to acquire and have jurisdiction; and that, in addition thereto, it was a matter left by what had been agreed upon wholly to the discretion of the United States to determine to what extent we would employ military power and resort to fortification to protect our rights.

An explicit stipulation to this effect was not insisted upon because silence on the subject of itself left us free to do as we might see fit. It was because the British Government thought such was the legal

effect of silence that they insisted upon the express prohibition of the first treaty.

Aside from the fact that it was deemed unnecessary, it was thought that to specifically incorporate in the treaty a clause authorizing fortifications would be to give undue prominence to the subject and excite opposition that might again defeat ratification.

There were a number of Senators and a great many people who were of the opinion then, and are probably still of the opinion, that it might be good policy for the United States not to fortify or do anything else that would invite an attack on the Canal or make that a theatre of hostilities in case of war; but, however that may be, it was, I know, the purpose of the great majority of the Senate, and as to the second treaty, at least, the purpose of Mr. Hay also, to preserve to the United States an unquestioned right to do with respect to all such matters whatever in its judgment it might at any time think its best interests required.

Very truly yours, etc.,

J. B. FORAKER.

HON. WM. H. TAFT,
White House,
Washington, D. C.

President Taft made the following answer to my letter:

THE WHITE HOUSE,
Washington.

January 3, 1911.

My Dear Senator:—I have yours of January 2d, and thank you sincerely for taking the trouble to give me so valuable a statement of the exact facts in reference to the adoption of the present treaty between Great Britain and this country, and its proper construction in the matter of the right of this Government, if it sees fit, to fortify the Canal. I shall transmit the same to the Secretary of State, and should be very glad to have the privilege of publishing the letter if you will permit me to do so. I think it clarifies the matter in a way that would be exceedingly useful.

Awaiting your expression of your wish in this regard, believe me, my dear Senator, with best wishes for the New Year,

Sincerely yours,

HON. J. B. FORAKER,
Traction Building,
Cincinnati.

WM. H. TAFT.

To this answer I responded as follows:

CINCINNATI, January 5, 1911.

Dear Mr. President:—I have your letter of January 3d, and am glad to know that you regard the statement as of some value. Not knowing the exact official status of the controversy to which it relates, I did not know whether it would be helpful or not. I sent it, however, as I

stated, for what it might be worth and for such use as you may see fit to make of it. So far as I am concerned there is no objection to its publication. If you so desire I shall be glad to see you make that use of it.

Assuring you that I heartily reciprocate your New Year's greetings,
I remain,

Very truly yours, etc.,

J. B. FORAKER.

HON. WILLIAM H. TAFT,
White House,
Washington, D. C.

The question of our right to discriminate in favor of our vessels using the canal reached an acute point early in the administration of President Wilson.

In a speech made before the Chamber of Commerce at Cleveland, Ohio, March 17, 1914, I discussed this subject at length. The speech is too long for reproduction in its entirety, but because of the grave importance of this question I quote generously.

I recited the successive efforts of other countries as well as our own to authorize, encourage and protect the construction of an inter-oceanic canal across the isthmus, and pointed out that until the Spanish-American war all schemes and plans therefor contemplated the investment of private capital and commercial purposes, but that the object lesson of the Oregon aroused a demand for the construction of a canal by the Government with public money and primarily for the national defense, as a means of doubling the efficiency of our navy; that on account of this change of purpose prior discussions of the subject and prior treaties were largely inapplicable in determining the proper construction of the second Hay-Pauncefote Treaty under which we acted; that in ratifying that treaty we supposed we were to be the sole owner, with all the rights of ownership with respect to its use, except as they were restricted by that instrument and that we had the right to fortify and defend the canal, and if we saw fit to do so exempt our own vessels from the payment of tolls for its use.

As to our right to fortify I have already said enough perhaps in the correspondence on that subject with President

Taft, which I have just quoted, but inasmuch as I devoted only a few paragraphs of the Cleveland speech to the discussion of our right in that respect I quote that as a sort of preface to the more extended discussion of our right to exempt our vessels from the payment of tolls.

I quote as follows:

It was in keeping with the dominating idea of national defense that as the canal approached completion it was decided by our Government to erect and maintain there suitable fortifications. It was so announced.

At once there was a protest made by the British Government, which claimed that we had no authority, under the treaty, to place any forts there, and loud and long were the charges sounded abroad, and repeated, parrot-like, here at home, that we were violating our solemn agreement and disgracing ourselves before the whole world.

It required some patience to answer such calumny; but that was all.

The mere fact that fortifications had been prohibited in the first Hay-Pauncefote Treaty, and were not prohibited in the second, was enough it would seem to settle that question in our favor, since manifestly the prohibition was put into the first treaty because it was the opinion of both contracting parties that without such prohibition, as the owner of the canal, our Government would have the right to fortify if it should see fit to do so. The absence of this prohibition from the second Hay-Pauncefote Treaty clearly left the right to our discretion.

It is unnecessary, however, to argue that question now for it was finally conceded that we had the right to fortify, if we saw fit to do so.

We are accordingly, at an expense of several millions of dollars, building fortifications, and arming and equipping them with the latest, largest, and most efficient guns for the defense of the same in case it may ever be necessary to make such defense.

In due time the President was authorized by the Congress to fix the terms and conditions upon which, so far as tolls were concerned, the canal might be used, and pursuant to this authority he determined the respective rates different vessels should pay.

THE EXEMPTION ACT.

Also in the meanwhile, on the 17th day of August, 1912, Congress enacted a law, according to the provisions of which American vessels engaged in our coast-wise trade are exempted from the payment of any tolls.

When this legislation was first proposed, in the early part of 1912, the British Government, while the bill was yet under consideration, again protested; this time on the ground that such exemption was a discrimination, and as such in violation of the second Hay-Pauncefote Treaty, under which the canal was constructed.

The ground of this protest was, that, according to the provisions of the treaty, although the Clayton-Bulwer Convention was superseded by the present treaty, the canal was to be constructed, maintained and operated "without impairing the general principle of neutralization

established in Article VIII of the Clayton-Bulwer Convention," and the further provisions found in Article III of the present treaty that the basis of such neutralization should be in accordance with certain rules, "substantially as embodied in the Convention of Constantinople signed on the 29th day of October, 1888, for the free navigation of the Suez Canal.

After a very thorough and exhaustive discussion the bill was passed and became a law by a very large majority vote in both the Senate and the House.

But most unexpectedly the question has been again opened; this time by President Wilson in a message to Congress, March 5, 1914, which is so short, and so important I give it in full:

"Gentlemen of the Congress:—I have come to you upon an errand which can be very briefly performed, but I beg that you will not measure its importance by the number of sentences in which I state it. No communication I have addressed to the Congress carried with it graver or more far-reaching implications to the interest of the country, and I come now to speak upon a matter with regard to which I am charged in a peculiar degree, by the constitution itself with personal responsibility.

"I have come to ask for the repeal of that provision of the Panama Canal Act of August 24, 1912, which exempts vessels engaged in the coastwise trade of the United States from the payment of tolls, and to urge upon you the justice, the wisdom and the large policy of such a repeal with the utmost earnestness of which I am capable.

"In my own judgment, very fully considered and maturely formed, that exemption constitutes a mistaken economic policy from every point of view, and is, moreover, in plain contravention of the treaty with Great Britain concerning the canal concluded on November 18, 1901. But I have not come to you to urge my personal views. I have come to state to you a fact and a situation. Whatever may be our own differences of opinion concerning this much debated measure, its meaning is not debated outside the United States. Everywhere else the language of the treaty is given but one interpretation, and that interpretation precludes the exemption I am asking you to repeal. We consented to the treaty; its language we accepted, if we did not originate it; and we are too big, too powerful, too self-respecting a nation to interpret with too strained or refined a reading the words of our own promises just because we have power enough to give us leave to read them as we please. The large thing to do is the only thing we can afford to do, a voluntary withdrawal from a position everywhere questioned and misunderstood. We ought to reverse our action without raising the question whether we were right or wrong, and so once more deserve our reputation for generosity and the redemption of every obligation without quibble or hesitation.

"I ask this of you in support of the foreign policy of the administration. I shall not know how to deal with other matters of even greater delicacy and nearer consequence if you do not grant it to me in ungrudging measure."

It will be noted that the President asks for the repeal of the Exemption Act on the ground that in his "own judgment" it constitutes a mistaken economic policy, and because, in the second place, it is in "plain contravention" of our treaty obligation, and because, in the third place, notwithstanding our different opinions here at home, everywhere outside the United States the opinion prevails, as he says, that the treaty "precludes the exemption;" and because "the large thing to do is the only thing we can afford to do, a voluntary withdrawal from a position everywhere questioned and misunderstood."

He concludes his message by saying "I ask this of you in support of the foreign policy of the administration. I shall not know how to deal with other matters of even greater delicacy, and nearer consequence if you do not grant it to me in ungrudging measure."

THE POLICY OF EXEMPTION.

So far as the *policy* of exemption is concerned, it is not vitally important whether the President is right or wrong. If our right and power to exempt, or not, as we may at any time see fit, were conceded, we could repeal the act and then at any time in the future return to the policy of exemption if we should find by experience that a mistake had been made.

I then pointed out that it had been the legitimate expectations of the friends of the canal that through its ownership and operation we might be able to help our merchant marine, and that doing so by exempting our ships from the payment of tolls was not a subsidy to our ships any more than to require them to pay tolls would on the other hand be a subsidy to our trans-continental railroads; and if it were, it was a help wisely bestowed.

I then showed there was not unanimity of sentiment abroad against our right to exempt, as stated by the President in his message, but, that on the contrary, there was great diversity of opinion, citing in support of my contention a number of eminent British and German Jurists and Publicists, who unqualifiedly upheld the American side of the case.

I then proceeded as follows:

But all this is of relatively little importance, for if we are not right in our contention, we should not, and do not wish to adhere to it; but, if on the other hand, we are right in our contention we should not yield because of foreign opinion or on any other account, unless there be good and sufficient reason for doing so.

No one would have his government violate or evade in the slightest degree any kind of treaty obligation, no matter whether fairly entered into, or not.

No nation could have any standing among the nations of the world, that would consciously violate its obligations. This sentiment is universal. The gentlemen who uphold the British contention have no monopoly of honorable purpose. The question is not ethical, but practical.

Do we have a right to exempt vessels in our coastwise trade? If not that ends the controversy, and Congress can not too quickly comply with President Wilson's request. The President says exemption is in "*plain* contravention" of our treaty. The fact that he has been on both sides of the question either refutes him or shows insincerity.

THE BRITISH CONTENTION.

The British contention that we do not have the right is based on the first rule of the third article of the treaty, which provides:

"1. The canal shall be free and open to the vessels of commerce and of war of all nations observing these rules, on terms of entire equality, so that there shall be no discrimination against any such nation, or its citizens or subjects, in respect of the conditions or the charges of traffic or otherwise. Such conditions and charges of traffic shall be just and equitable."

If that provision stood alone, looking no further than the face of the language employed, the contentions of Great Britain might be maintained, but not rightfully, because the contemporaneous record shows such was not the understanding of either Great Britain or the United States at the time when the treaty was negotiated.

The language relied upon is that "all nations observing these rules," etc., shall have a right to use the canal on terms of entire equality, etc.

The words "observing these rules," were not in the first Hay-Pauncefote Treaty. They were put into the second Hay-Pauncefote Treaty at the suggestion of Lord Lansdowne, representing Great Britain, who stated why he desired to have them inserted, in the following language, which has reference to the elimination from the second Hay-Pauncefote Treaty of that provision of the first Hay-Pauncefote Treaty which authorized an invitation to other nations to adhere:

"While indifferent as to the form in which the point is met, I must emphatically renew the objections of His Majesty's Government to being bound by stringent rules of neutral conduct not equally binding upon *other* powers. I would, therefore, suggest the insertion in Rule 1, after 'all nations' of the words 'which shall agree to observe those rules.' This addition will impose upon *other* powers the same self-denying ordinance as Great Britain is desired to accept, and will be an additional security for the neutrality of the canal, which it will be the duty of the United States to maintain."

No one can claim that in this note Lord Lansdowne included the United States among his "other powers," because the entire context, and especially the subject immediately under consideration proves the contrary, for his language shows that his anxiety was to place in the new treaty words that would secure to Great Britain, without question, equality with *other* nations, not with us, in the use of our canal. British

diplomacy had not yet reached the stage of demanding equality of tolls with us, although in addition we were bound to bear all the burdens of construction, maintenance, and operation.

The first demand was for equality among those who were entitled to equality, and was granted. The present demand is not for equality, but for rank inequality to our injury, and should be denied.

The representative of the United States in that negotiation was Mr. John Hay, then Secretary of State. He filed an official "Memorandum," giving his understanding of the different provisions of the treaty. Speaking on this particular point, he shows he had the same thought in mind that Lord Lansdowne had expressed.

He says:

"In conformity with the Senate's emphatic rejection of Article III of the former treaty, which provided that the High Contracting Parties would immediately upon the exchange of ratifications, bring it to the notice of other powers, and invite them to adhere to it, no such provision was inserted in the draft of the new treaty.

"It was believed that the declaration that the canal should be free and open to all nations on terms of entire equality (now that Great Britain was relieved of all responsibility and obligation to enforce and defend its neutrality) would practically meet the force of the objection which had been made by Lord Lansdowne to the Senate's excision of the article inviting the powers to come in, viz., that Great Britain was placed thereby in a worse position than other nations in the case of a war with the United States."

This provision recognizes our ownership and authority and is intended to relieve the dependent situation of the other nations so acquiring a right by the observance of the rules and regulations we prescribe—something not necessary to our right to use the canal.

If it were otherwise, we might, through failure to observe our own rules, lose our right to use our own property, as any other nation would, doing the same thing.

On this point after showing that it was his purpose in negotiating the treaty so to frame the instrument that it would cut off absolutely all kinds of contract right in every other nation, thus leaving the United States the sole and unqualified owner of the canal, Mr. Hay said, "*Thus the whole idea of contract right in other powers is eliminated and the vessels of any nation which shall refuse or fail to observe the rules adopted and prescribed may be deprived of the use of the canal.*"

Throughout the entire period during which the second canal treaty was being negotiated by Mr. Hay I was from time to time in conference with him on the subject. I think I can say with as much confidence as one man ever can speak of

what is in the mind of another that it never occurred to him that there was any ground for the contention that the United States did not have a right to do under this treaty with respect to its own shipping in the use of the canal what it undertook to do in the Tolls Exemption Act. But aside from my personal knowledge of his views the language just quoted shows that it is worse even than a libel on the dead to claim, as has been done, that he understood that the second treaty could be so construed as to prohibit such favor to our ships—worse than libel because it necessarily charges him with either insincerity or downright stupidity; and no one has ever yet had the hardihood to ascribe to him any such moral or mental defect.

Most of the ground for controversy as to what Mr. Hay thought and intended to do is doubtless due to the fact that he framed the second treaty in a radically different light from that which he had when he negotiated the first treaty.

But exonerating Mr. Hay from such charges, as thus suggested, his language shows conclusively that it never occurred to him that the United States was included in the phrase "*all nations observing these rules*" shall have a right to use the canal "*on terms of entire equality*"; since his phrase "*any nation which shall refuse or fail to observe the rules adopted and prescribed may be deprived of the use of the canal*" is as broad as the other. From which it follows that if the United States be included in the term "*all nations,*" equally is it included in the term, "*any nation which shall refuse,*" etc., and such inclusion would in the contingency given mean our exclusion from the use of our own canal.

In other words, according to the British contention, we were to construct the canal, pay for its construction, assume the responsibility of its operation, keep it in proper repair at an expense, as the sequel shows, of millions annually,*

* Since the text was dictated and printed the "slides" have become so frequent and serious that the canal has been closed indefinitely. Colonel Goethals has announced that it will be probably January 1, 1916, if not later, before the canal can be sufficiently redredged to admit the passage of ships. Thus as time passes the seriousness of our burden of maintenance and the injustice of our bearing it for all time without any advantage whatever to ourselves appears more and more manifest.

ourselves prescribing the rules to be observed by all ships passing through it, and *then forfeit our right absolutely to use the same on any terms if we should fail for any reason to observe our own rules.* Such a proposition lacks both common sense and common honesty.

Recurring now to my speech I quote further as follows:

Rule one of Article III above quoted as the basis of the British contention is but one of six rules that are contained in the same article; and all are taken from the Constantinople Convention for the government of the Suez Canal, to the owner of which canal they did not apply, for that *owner* is a private corporation, that has no ships of either commerce or war, and has no power or right to fortify or commit acts of war or hostility.

These other rules, so far as they relate to the questions we are considering, are as follows:

"2. The canal shall never be blockaded; nor any right of war be exercised, nor any act of hostility be committed within it.

"3. Vessels of war of a *belligerent* shall not revictual nor take any stores in the canal, except so far as may be strictly necessary.

"4. No belligerent shall embark or disembark troops, munitions of war, or warlike materials in the canal, except in case of accidental hindrance of the transit, and in such case the transit shall be resumed with all possible dispatch.

"5. The provisions of this article shall apply to waters adjacent to the canal, within three marine miles of either end.

"6. The plant, establishments, building, etc. . . . in time of war, as in time of peace, shall enjoy complete immunity from attack or injury by belligerents," etc.

All these rules are natural, intelligent and proper when applied to nations who have no rights in the canal, except such as pertain to its use, but utterly out of place when applied to the owner, yet they are all found in the same article with rule one, which it is claimed prohibits exemption of our vessels from tolls. They are all adopted for the same purpose, and for that reason thus grouped together. The one can not apply to us any more than the others, but if all apply, then why should we be wasting millions upon fortifications? For under these prohibitions we could not furnish our forts with ammunition, or with the guns and other implements of war necessary to their defense; neither could we use our guns to resist a belligerent, for such resistance would involve an act of hostility, and an exercise of the right of war, both expressly and explicitly prohibited.

Sir Edward Grey admits in his letter of protest that if one rule of Article III applies to us, all do, and that these absurd consequences would follow, but seeks to escape by conceding that because of the fact that the canal is located on our own soil, we must be allowed to commit acts of belligerency, or defense within the canal or the waters adjacent thereto.

His exact language is:

"Now that the United States has become the practical sovereign of the canal, His Majesty's Government do not question its title to exercise belligerent rights for its protection."

But our ownership of the canal territory had not been acquired or even determined upon when the treaty was made; therefore, it follows that we must have agreed to prohibit ourselves from all these acts of hostility and war, if we located the canal on foreign soil, as it then seemed more than probable we would, for it was not then known that we would be able to acquire more than a mere license or easement. And yet knowing that in such case we would not be allowed to use them, we carefully reserved the right to build forts and prepare to defend them. Certainly no such construction is permissible, since it would be only sheer imbecility to reserve a right to protect our property only on our own soil, where there would likely be less occasion to resort to acts of war for its "protection" than if it were on foreign soil. The British admission, however, explicitly exempts us from the inhibition of all the rules relative to acts of war or "protection"; and that exempts us from all of them.

For neither Sir Edward Grey, nor anyone else, can make "fish of one and flesh of another"; especially such fish and such flesh. Either all the rules of Article III are applicable to us or none. If none is applicable then we are not included among the "all nations," and can do as we like with respect to our own.

Again, if the first rule is applicable, then we can not show any favor whatever to either our ships of war, or our ships of commerce, either foreign or domestic, or give to ourselves any advantage whatever in either war or in peace.

We could not pass a warship, much less a fleet of them, or a government transport even in time of war and dire necessity, except on full payment of tolls.

If this be the proper construction of the treaty, then the United States is in a worse condition with respect to the canal it has built, and is to maintain and operate, than any other nation; since the result must be that, in addition to the burden of first cost, we are bound to forever bear the burden of maintenance and operation, without being allowed to share in the use or benefits, beyond what all other nations may, which have not borne any such burden in the past, and are not obligated to share any such burden in the future.

If the canal had proven a failure, and we had been compelled to abandon it midway its construction no one would have contributed a dollar toward our reimbursement, and if its revenues prove insufficient to meet operating expenses, or if perchance some time in the future, on account of an earthquake, or from other cause, it should be destroyed, no one would help us to bear the loss; and we would not expect any such help from any source, and would not be entitled to it, because we have proceeded throughout upon the theory that we were building at our own cost and risk in every respect, and that we are so to maintain it; all because the canal is primarily for our own benefit, first for our national defense, and secondly for our commerce and other interests.

NEUTRALIZATION.

It does not help that contention, as claimed, to refer to the fact that it is recited in the preamble of this treaty that its purpose was to be accomplished "without impairing the general principle of neutralization established in Article VIII of the Clayton-Bulwer Convention." That reference does not keep the Clayton-Bulwer Convention alive, or make it applicable. Moreover, that declaration of the preamble is specifically fulfilled by Article III, which expressly states precisely what the neutralization shall be; or rather what shall be the *basis* thereof, thus apparently allowing to the United States some latitude.

It is not necessary, however, for the United States to take any liberty with the text of this treaty to uphold our contention, for the six rules that form the basis of neutralization, if literally followed, fully authorize and sustain it.

Nothing in the treaty helps our contention more than this word "neutralization." Its meaning is well understood. It is the same throughout the world, and in all works on International Law; but if there were doubt as to its meaning, the rules themselves make specific and perfectly plain what the contracting parties intended.

The well-defined and established primary meaning of "neutralization" has reference to conditions of war, and the rights and duties of belligerents. It will not be disputed that as to five of the six rules its meaning is the same it has ordinarily, and, therefore, the same as it has when applied to a neutral port. There can not be any neutral port unless there are belligerents, and there are no belligerents in time of peace—only in time of war.

Neutrality means the equal treatment of the belligerents compared one with another; but not the equal treatment of belligerents with the nation to which the neutral port may belong. Assuming the United States to be the neutral nation, we could not show favor to one or the other of warring nations without violating the rules of International Law applicable, and thus laying ourselves liable to be called to account by the injured belligerent. There is nothing in the treaty to indicate that the word as used was to have any other than its ordinary meaning, and this ordinary meaning has no reference to peace, or the conditions of peace, but only war and the conditions of war; but if we are to extend its application to rule one, and make it apply to tolls in time of peace as well as in time of war, then, according to all rules of construction, neutrality in such new use would mean equal treatment accorded by the neutral nation to other nations just as it does in every instance under its familiar application.

It is impossible to think of any case of neutrality or "neutralization," whether peaceful or warlike, without at least three parties being concerned, the neutral, who has no interest in the controversy, and the parties thereto who are entitled to equal treatment as between themselves, and receiving that, have no claim of any kind against the neutral.

All things considered, the British contention is not only utterly untenable, but also utterly unjust.

And yet, notwithstanding, it may be good policy at this time, or become good policy at some other time, to recede from the exercise of

our right of exemption, and perhaps we should do so on the President's recommendation, if he would not require us at the same time to abandon our claim of power and write ourselves down as having been willing to violate our sacred obligations, or of having been so stupid that we did not understand them.

Placed on the ground that we have no right of exemption under the treaty, the action we are asked to take is of the most serious character.

It not only means self-condemnation, but it also means the abandonment for all time of a right which in the vicissitudes of our national life may, under changed circumstances, be of value far beyond what we can now realize or appreciate.

If we can not thus favor our coastwise shipping, which no foreign shipping can compete with, of course, no such favor can be allowed to our ships engaged in foreign trade, and as a result no advantage whatever arises to our shipping of any class out of this great national work.

On the other hand, the exercise of this right to show favor to our own ships in the use of our own property would go far toward obviating the necessity of resorting to subsidies against which there is so much prejudice that the proposition to abandon exemption and pay the tolls, and then have the Government rebate the amounts paid in whole, or in part, in the nature of subsidies has been assailed as a dishonest evasion of our treaty obligations; although nearly every nation whose ships sail through the Suez Canal has either in part, or in full, resorted to the same method of lifting from such ships the burden of tolls they are required to pay—among these nations Great Britain herself.

If we recede from the position we have taken, and ever reach the point where, as a relief against the tolls, our vessels may be required to pay, our Government shall undertake to subsidize it may be safely assumed that we shall then hear another growl from the British lion; for if they are to be allowed to dictate with respect to the use of our canal to the extent now demanded, it will be found the more we yield the more we will have to yield.

Sir Edward Grey has given us fair warning of all this in his letter of protest. Speaking on this point, he tells us:

“Unless the whole volume of shipping which passes through the canal, and which benefits all equally by its services, is taken into account, there are no means of determining whether the tolls chargeable upon a vessel represent that vessel's fair proportion of the current expenditure properly chargeable against the canal, that is to say, interest on the capital expended in construction, and the cost of operation and maintenance. If any classes of vessels are exempted from tolls in such a way that no receipts from such ships are taken into account in the income of the canal, there is no guarantee that the vessels upon which tolls are being levied are not being made to bear more than their fair share of the upkeep. Apart altogether, therefore, from the provision in Rule 1 about equality of treatment for all nations, the stipulation that the tolls shall be just and equitable, when rightly understood, entitles His Majesty's Government to demand, on behalf of British shipping, that all vessels passing through the canal, whatever their flag or

their character, shall be taken into account in fixing the amount of the tolls."

" . . . if the effect of the method chosen for granting such subsidy would be to impose upon British or other foreign shipping an unfair share of the burden of the upkeep of the canal," the United States would not have a right to grant such a subsidy.

This language means we not only have no right to exempt any of our vessels, not even our warships, or government transports, from the payment of the same tolls that the ships of all other nations may be required to pay, but that in addition thereto we are to be limited in the collection of tolls to such amount as may be sufficient for the "upkeep" of the canal, and this "upkeep" is defined to be "interest on the capital expended in the construction and the cost of operation and maintenance."

What margin of profit will be allowed, and how much we will be permitted to expend for operation and maintenance are not stated.

Neither does he allow us in the program he thus lays down to set aside anything for a sinking fund, with which to retire the four hundred millions of bonds our Government has issued.

When it is remembered that the tolls collected for passing through the Suez Canal, which cost only one-fourth of what this canal has cost us, are much higher than the tolls prescribed for the use of our canal, and when it is further remembered that the only limitation found in the treaty upon the amount of tolls to be fixed is that they shall be "just and reasonable," this kind of language amounts to a species of effrontery that it would be difficult to exaggerate.

It forecasts all kinds of trouble, annoyance, vexation and exasperation with respect to the maintenance, operation and use of our canal, if, instead of rebuking it, we complacently yield, for he plainly states that "all vessels passing through the canal, whatever their flag, or their character, shall be taken into account in fixing the amount of tolls." This means that every United States battleship must be counted, every Government transport must be counted, every other American ship must be counted, and the amount of tolls collected therefrom shall be the subject of an accounting, which Great Britain will have a right to supervise, and take exception to at her pleasure, and that if any subsidies are paid, they, too, shall be reported, examined and passed upon, lest perchance she be required to pay more than her share.

The dispatches from Washington tell us of the expenditure of many thousands of dollars in support of a propaganda started by the Carnegie Endowment for International Peace to help secure the repeal of the Exemption Act in the interest of international peace. This is an even greater blunder than the policy of "watchful waiting." Both alike may postpone, but neither can permanently prevent a rightful settlement. Neither policy secures peace; both threaten war—men will not submit to injustice; neither will nations.

Later, April 22, 1914, I elaborated all these points in a statement I made before the Committee on Inter-oceanic

Canal of the United States Senate. In my opinion the abandonment of our right to discriminate in favor of our own ships using the canal was an inexcusable surrender of an American right, for which we shall suffer, are already suffering, serious injury and embarrassment. It is another blunder added to a persistent long continued narrow and un-American policy of refusing necessary help on account of which the European war found us without a merchant marine. In consequence although we have a great surplus of non-contraband products for which other countries are making unusual demand and are willing to pay unusual prices, yet we have no ships of our own in which to carry them to market. We are, therefore, learning the value of American shipping at a cost of hundreds of millions to the American people—many times more in amount than all the ship subsidies proposed since the beginning of the Government.

It is to be hoped that the lesson will be sufficient to teach us to supply our needs in this respect; and that the wrong that has been committed will soon be undone by reclaiming our own and using it as the men who provided for the canal intended it should be used.

CHAPTER XXXVIII.

1902-1908

THE PHILIPPINE TREASON AND SEDITION ACT—AUTHORSHIP OF SHERMAN ANTI-TRUST LAW—THE CHINESE EXCLUSION BILL—DEFENSE OF GOVERNOR TAFT—JOINT STATEHOOD—THE PHILIPPINE TARIFF—THE SECESSION OF PANAMA.

FEBRUARY 6th, 1902, the Secretary of War, in response to a Resolution calling for the same, sent to the Senate a copy of what was called the Philippine Treason and Sedition Act. When it was read from the Secretary's desk, Mr. Hoar, addressing the Senate, said:

If I understood that correctly, a wife, knowing of what is alleged to be the treason of a husband, or a husband knowing what is alleged to be the treason of a wife, or a mother knowing what is alleged to be the treason of a son, or a son knowing the treason of a mother, and so on, of the son and the father and the brother—the person knowing that and not acting as an informer to the government is, under a law imposed by the authority of the United States, to be punished by seven years' imprisonment. I should like to know whether that is true.

The Senator had reference to the following section of the Act mentioned:

Section 2. Every person, owing allegiance to the United States or the government of the Philippine Islands, and having knowledge of any treason against them, or either of them, who conceals, and does not as soon as may be disclose and make known the same to the provincial governor in the province in which he resides or to the civil governor of the islands or to some judge of a court of record, is guilty of misprision of treason, and shall be imprisoned not more than seven years and be fined not more than \$1,000.

When the Secretary had concluded re-reading the statute, in answer to Senator Hoar's inquiry, I sent to the Secretary's desk and caused to be read the revised statutes of the

United States on the same subject, one of which sections read as follows:

Section 5333. Every person owing allegiance to the United States and having knowledge of the commission of any treason against them, who conceals and does not, as soon as may be, disclose and make known the same to the President or to some Judge of the United States, or to the Governor, or to some Judge or Justice of a particular State, is guilty of misprision of treason, and shall be imprisoned not more than seven years and fined not more than \$1,000.

A general debate followed, participated in by a number of the Senators, with the result that it was made quite clear that our Commissioners in the Philippines, in enacting the legislation complained of, were but following our own statute and applying to the Filipinos precisely what our fathers had from the beginning of our government applied to the people of the United States.

Senator Hoar was quite sensitive over the matter. He disliked exceedingly to have to admit that for thirty years or more he had been a member of one House or the other of the Congress of the United States, with such a provision of law all the while in force, and during all that period had not discovered there was any necessity for repealing, altering or amending it.

Always, until this encounter, he had been exceedingly friendly in his relations with me. After this he did not seem so cordial in his manner. The trouble was cleared up, however, in a very accidental and somewhat amusing way three or four months afterward. The Congress had adjourned for the summer vacation and I had occasion to be in New York. I was stopping at the Fifth Avenue Hotel. I had retired rather early and was sound asleep when I was awakened by hearing some one walking in my room, in which there was no light. At once that awful sensation came over me that there was a burglar in the room. I listened intently and there was no mistake. I could hear him distinctly as he, with evident purpose as I supposed, to make as little noise as possible, seemed to be

carefully making his way toward the dresser that stood against the wall about the middle of the room. Presently he turned on the light. To my great surprise and my great relief I recognized Senator Hoar as the supposed burglar. About the same instant I recognized him he looked toward the bed and recognized me. Explanations followed to the effect that he had arrived at the hotel from his home in Massachusetts a few minutes before he appeared in my room. He registered and was assigned to a room on the next floor above and immediately over mine. After he had gone to his room he recalled that he had written a letter on the train which he desired to mail, and left his room and went below for that purpose. Returning, he left the elevator on my floor instead of his. He said the thing that bothered him somewhat was that he had left his light burning, yet he felt so confident he was in his own room that he accounted for that by supposing that in some accidental way it had been turned off.

I was quite surprised to think I had retired without locking my door; a most unusual thing for me to do.

The whole incident was so ludicrous and at the same time so humorous that it served to efface whatever of disagreeable feeling he might have toward me, and from that time on he was as friendly as formerly until we had another clash over the secession of Panama.

I did not at any time have the slightest ill-feeling toward him. He was a man of exalted character who enjoyed to the fullest extent the respect and esteem of all his colleagues without regard to political differences. He had, however, reached that stage where he was at times a little bit fussy, and on that account prone to treat with impatience, if not with petulance, any positive dissent from the views he might advocate. He had also come to the point where it was easy for him to think mistakenly that he was not fully appreciated and that others were given credit to which he was entitled.

The truth of history and justice to Senator Sherman require that I should mention an instance of the kind:

AUTHORSHIP OF SHERMAN ANTI-TRUST LAW.

May 20, 1903, at Chillicothe, Ohio, on the occasion of the Ohio Centennial celebration, I delivered an address entitled "Ohio in the Senate of the United States," in the course of which, speaking of Senator Sherman, I said:

Many statutes bear testimony to his far-sighted wisdom as a legislator. One of the most important was one of the latest.

It shows how clearly he understood the progress of changing conditions and the legislative remedy to apply to correct apprehended evils and abuses.

He was among the first to see the enormous combinations of capital we have been witnessing and the temptation there would be to unreasonable restraint and monopoly, and before others realized the danger or comprehended that any legislation was necessary, or even appropriate, he had secured the enactment of what the whole country has recently become familiar with as the Sherman Anti-Trust Law of 1890.

This address was printed in pamphlet form for distribution. A copy of it reached Senator Hoar. Thereupon the following correspondence ensued:

WORCESTER, MASS., May 28, 1903.

My Dear Senator:—I have received, I presume through your courtesy, a very interesting address on "Ohio in the Senate of the United States." It is a valuable contribution to history.

I observe that you say, p. 24, that John Sherman, "before others realized the danger . . . had secured the enactment of what the whole country has recently become familiar with as the Sherman Anti-Trust Law of 1890." If there was any man in this world who did not have anything to do with the Anti-Trust Law of 1890, it was John Sherman. He had altogether a different plan of dealing with the matter. The bill he introduced was amended by the Senate, and then sent to the Committee on the Judiciary, and an entirely new measure substituted for it, of which I wrote every syllable myself. It was then carried through the Senate. The House refused to accept it. Two Conference Committees were appointed, of both of which I was a member, and the House finally yielded. Mr. Sherman was not a member of the Conference Committee that finally agreed on a bill. Your familiarity with parliamentary proceedings, which appear in the Record, will enable you to readily verify the correctness of this statement.

I am, with high regard, faithfully yours,

GEORGE F. HOAR.

THE HONORABLE JOSEPH B. FORAKER,
United States Senator,
Cincinnati, Ohio.

CINCINNATI, OHIO, June 1, 1903.

My Dear Senator:—I am in receipt of your letter of the 28th ultimo. What you say about the Sherman Anti-Trust Law of 1890 is entirely new to me, and as surprising as it is interesting. I regret exceedingly that I did not have the information you give before I prepared my address. I shall at once have the subject looked up, with a view to adding a footnote to the permanent record, if I can do so with propriety, making proper corrections.

What you say affords another illustration of how credit in such matters is sometimes erroneously given. In this instance, I have never heard of credit being given to any one except Mr. Sherman. The law is universally referred to as the Sherman Anti-Trust Law. I supposed that was because the bill passed substantially as he introduced it, or rather I would have so supposed if I had thought of it at all.

With sentiments of highest regard and esteem, I am,

Very truly yours, etc.,

HON. GEORGE F. HOAR,
Worcester, Mass.

J. B. FORAKER.

COMMITTEE ON THE JUDICIARY.

UNITED STATES SENATE.

WORCESTER, MASS., June 27, 1903.

My Dear Senator:—We all know Mr. Sherman's great wisdom, especially when he had to deal with questions of finance, in which he was at home. But he was quite in the habit of introducing bills, especially at the beginning of a session of Congress, which were sent to him by other people, or the scheme of which was proposed in the newspapers, without giving them much consideration, and very often without supporting them afterward himself. He introduced some very radical measures to correct crimes in regard to Southern elections which he was not prepared to stand by afterward. Another instance was the introduction of a bill for national appropriation for education which he supported in the beginning, but which afterward he opposed very vigorously. That policy was defeated undoubtedly, chiefly through his opposition. He also introduced a bill providing that whenever any protected article was manufactured by a trust, it should be put upon the free list. The result of that would have been,—as I now recall, although I have not the bill before me—that if some importers in New York should get up a little trust for the purpose of manufacturing some woolen or cotton or steel product in the manufacture of which hundreds of thousands of men and millions of dollars of capital were employed, it would at once go on the free list; and that would be true, although the thing were done for the very purpose. That always seemed to me one of the wildest schemes ever proposed.

The Anti-Trust bill which he introduced in 1890 was considered too radical by the committee to whom it was referred—the Committee on Finance—who amended it, undertaking to deal with the matter in a very different manner. To that I moved an amendment on the floor of the Senate and the bill was finally referred to the Judiciary Committee. We struggled with the question there, and at last I proposed

to the committee the present law—as it was prior to the recent amendments. That was objected to very strongly by several members, but finally they agreed to it, I then thought, and Mr. Edmunds has more than once publicly stated that he then thought that the term “in restraint of trade” was a technical term in the English law, and meant improperly in restraint of trade and would cover only such combinations as the court would refuse to support either in England or in this country as contrary to public policy. I supposed then that the phrase “in restraint of trade” had a settled technical meaning in the law as much as the word felony or conspiracy. But, as you know, the Supreme Court, by a bare majority, held that it includes contracts in restraint of trade, whether proper or improper, although they have not adhered to that logically in some later decisions.

The bill was then reported back to the Senate, and, after discussion, passed the Senate. The House disagreed to it, and proposed some amendments, and the bill went to Conference. Mr. Edmunds, chairman of the committee, and I who was the author of the measure as it was reported, were made the Senate Conferees, as is usual in such cases. The Conference Committee of the two Houses disagreed, and a new Conference was appointed. We, however, were appointed again on the new Conference. The House yielded, and the measure became a law. You will find all this abundantly established by the Record. Of course, the fact that I made the motion in the committee will not appear. But my statement about it will be confirmed, if it need confirmation, by the fact that I was the member of the committee who represented it in Conference, although the committee contained other and abler lawyers, including, if I remember aright, Mr. Evarts.

My idea was that this measure would be expounded by the court, that we should get decisions which should point out the defects of the law, and that then in a few years we could amend it and perfect it in a manner which would be acceptable to the country and just to all industries. I think that will all happen now. But I think the decision of the Supreme Court in the particular to which I have referred an unfortunate one.

I am, with high regard, faithfully yours,

GEORGE F. HOAR.

THE HONORABLE JOSEPH B. FORAKER,
United States Senator.

P. S.—If you desire to look at the debates you will see how completely Mr. Sherman was driven from every position which he took, and that the Senate took the extraordinary course of referring a bill reported from the Committee on Finance, clearly within its province, to another committee, whose report was accepted and acted upon and became a law.

I was unable to consult the record as Senator Hoar suggested I should do until after I left the Senate, and was unable until then to read his autobiography in which he makes claim in the most positive way that he was the author of the law, and that Sherman had nothing to do with it.

His exact language being in part, referring to Mr. Sherman and the Anti-Trust Bill:

I suppose he introduced it by request. I doubt very much whether he read it. If he did, I do not think he understood it. It was totally reconstructed in the Judiciary Committee.

In 1890 a bill was passed which was called the Sherman Act, for no reason that I can think of except that Mr. Sherman had nothing to do with the framing of it whatever. He introduced a bill and reported it from the Finance Committee, providing that wherever a trust, as it was called, dealt with an article protected by a tariff, the article should be put on the free list. This was a crude, imperfect and unjust provision.

Mr. Sherman's bill found little favor with the Senate. It was referred to the Judiciary Committee, of which I was then a Member. I drew as an amendment the present bill which I presented to the committee. There was a good deal of opposition to it in the committee. Nearly every member had a plan of his own. But at last the committee came to my view and reported the bill of 1890.

These statements started conflicting newspaper discussion and claims; among others the claim that neither Sherman nor Hoar wrote the Sherman Anti-Trust Law, but Senator Edmunds. This continued until 1911, when, thinking the matter ought to be thoroughly investigated, I employed Mr. M. H. Bumphrey, a competent and capable man, familiar with parliamentary procedure, to examine the entire record and report what the facts were.

His report makes a book of one hundred and twenty-eight pages and may be found in the Congressional and other libraries. At the same time that Mr. Bumphrey was making his investigation Senator Edmunds and Albert H. Walker, Esquire, of New York, an attorney and solicitor and the author of "Walker's Patent Law," were also doing the same thing.

The upshot of the whole matter is well stated by Mr. Walker in the following letter addressed by him to Hon. Moses E. Clapp of the United States Senate from Minnesota:

WASHINGTON, July 21, 1911.

HON. MOSES E. CLAPP.

Dear Senator:—In pursuance of your request, I submit the following report of the results of my investigations in the office of the Secretary

of the Senate and in the room of the Senate Judiciary Committee, relevant to the authorship of the Sherman law of July 2, 1890.

That statute was drawn in the Judiciary Committee in the latter part of March and the first part of April, 1890. It was based on the bill which Senator Sherman introduced as Senate Bill 1, early in December, 1899, but Senator Sherman took no part in framing the substitute, which was drawn by the Judiciary Committee. That committee was composed of Senators Edmunds, Ingalls, Hoar, Wilson of Iowa, Evarts, Coke, Vest, George and Pugh. All of its members participated in the consideration of the framing of the statute as it was reported by the Judiciary Committee, which is the exact form in which it was enacted and was approved by President Harrison July 2, 1890.

The eight sections of the statute were written by the following Senators in the following proportions:

Senator Edmunds wrote all of Sections 1, 2, 3, 5 and 6, except seven words in Section 1, which seven words were written by Senator Evarts. Those are the words, "in the form of trust or otherwise."

Senator George wrote all of Section 4. Senator Hoar wrote all of Section 7, and Senator Ingalls was the author of Section 8.

The statements of Chapter 2 of Walker's History of the Sherman Law, relevant to the authorship of that statute, were based on all the published information which had ever been printed when that book was written by me in 1910. But my personal investigation of the original records of the Senate has resulted in ascertaining that the credit of the authorship of that historic statute should be distributed as it is distributed in this communication.

ALBERT H. WALKER.

In published statements Mr. Edmunds has shown practically full concurrence with Mr. Walker's conclusions.

Mr. Bumphrey set forth the complete legislative record of the bill in both Houses and gave in detail the record of the Senate Committee on the Judiciary. This record confirms Mr. Walker's statement fully and completely so far as the mere writing and drafting of the bill as it finally became a law is concerned, but it shows that Mr. Walker should have added that not only what Senator Edmunds wrote, but also what Senator George and Senator Hoar wrote was embodied, so far as idea, thought and purpose were concerned, in the two bills introduced in the Senate by Mr. Sherman, save and except only the prohibition against monopolies provided for in the second section of the act as passed, and some minor details as to jurisdiction and procedure.

The monopoly section seems to have found formal and appropriate expression for the first time in Senator Edmunds'

redraft of Senator Sherman's bill, and for this new part he is probably entitled to more credit than anybody else, but as to all the other sections drawn by him, his work was only that of redrafting what was found in Senator Sherman's bills, either as introduced by him or as reported by him with amendments from the Finance Committee.

In other words, the record conclusively refutes Mr. Hoar's claim that he wrote "every syllable" of the law, as it was enacted, and does more than that, for it shows with equal conclusiveness that his part in the framing of the law as enacted was confined to a redraft of the provision of the law (Section 7) which makes its violators liable in three-fold damages for injuries occasioned by such violations, and this provision was in Mr. Sherman's first bill introduced in 1888, except that the recovery provided by that bill was limited to two-fold damages.

But the worst feature of Mr. Hoar's statement is not that he claims entire credit when he was entitled to only a small part, thus by inference denying any credit whatever to Senator Edmunds and his other colleagues on the committee, but his express denial to Mr. Sherman of any credit whatever, stating that he probably introduced his bill by request, without reading it, and that he never understood it or knew anything about it, and that his bill as introduced provided "that whenever a trust, as it was called, dealt with an article protected by a tariff, the article should be put on the free list."

No such provision as this is found in either of the bills introduced by Mr. Sherman. Such a provision was adopted by the Senate as an amendment to one of Mr. Sherman's bills, offered by some other Senator (Mr. Gray of Delaware, I believe, one of the Democratic leaders), but because of this amendment and some others that were adopted by the Senate when considering the bill as in committee of the whole, Mr. Sherman said, in opposition to a motion to refer the bill to the Judiciary Committee:

MR. SHERMAN: About that I have something to say. I give notice to the Senate that there are features of this bill that I do not intend shall be defeated by indirection and by the mode which has been adopted

here within the last hour. I give fair notice, so far as I am concerned, that this bill shall have fair play, I do not care who opposes it. . . .

The attempt now to belittle the proposition of the Senator from Kansas (an amendment regulating dealings in futures) seems to me an attempt to destroy and defeat this bill. I am too old a stager here not to understand the meaning of these various amendments. I know it perfectly well. But I say now that, for one, I do not care how long it takes, I do not propose that this bill shall be defeated in that way without at least a pretty fair chance to vote upon it.

There is some question as to the amendment proposed by the Senator from Kansas. Although it is wise in its purpose and in the main its provisions are wise yet, it may be treated of in another and separate measure. . . .

But I appeal to the Senate, now that we have this question of trusts and combinations before us, now that we have got a reasonable definition of trusts so as to meet the opinions of the Senators, when we have the machinery of the law to carry the bill into effect, and we have the additional sanction of a criminal provision to it that we ought not allow this bill to be defeated under these circumstances. If we do, the people of the United States will feel that the Senate of the United States is playing with a question which affects nearly and dearly the vital interests of the country.

That is all I have to say. I intend, so far as I can, to try to strip this bill of anything that is objectionable to a majority of the Senate, and then to pass what there is of virtual good in it.

Mr. Sherman spoke repeatedly in support of his bill and always most intelligently and with his accustomed ability and earnestness—in fact, with unusual earnestness. In one of these speeches, delivered March 21, 1889, he said, in concluding his argument, that it was the purpose of his bill

to arm the Federal Courts within the limits of their constitutional power that they may co-operate with the State Courts in checking, curbing and controlling the most dangerous combinations that now threaten the business and trade of the people of the United States. And for one I do not intend to be turned from this course by fine-spun constitutional quibbles or by the plausible pretenses of associated or corporate wealth and power.

This was not the language of a man who did not know what he was talking about, but just the reverse.

I quote it not only because it supports the claim that Mr. Sherman was acting intelligently, but that he was acting with determined purpose. He felt that the time had come to do what his measure proposed, and he was determined to do all in his power to accomplish that purpose.

Senators Edmunds, Hoar and Evarts were great and influential leaders in the Republican Party and in the Senate at that time, but John Sherman was at least the equal in rank and influence of either of them, and it requires no distorting of the record to show that it was due to his powerful name and influence and argument that sentiment in the Senate and outside was focused on this subject and kept there until, by discussion and amendment, such as is usual with respect to all great measures, the law finally enacted was evolved as a just and wise solution of a troublesome question for which *entire* credit is not due to anyone, but for which more credit is due to Mr. Sherman than to anybody else.

Various explanations and excuses have been offered for Senator Hoar's untenable claim. Perhaps he has sufficiently explained it in the preface to his autobiography, in which he says it is one of the weaknesses of old age to do exactly what he did here—to claim all where only a part is due.

I have no interest in the matter except only to establish the truth with respect to a controversy Senator Hoar started, and by the establishment of the truth prevent injustice to Senator Sherman, who was in his grave and unable to defend it some years before his title to authorship of this famous law was disputed.

To those desiring to pursue the matter further it may reflect some light on the origin of the mistaken claims of Senator Hoar that the debate bears evidence that there was some clashing between Senator Sherman and Senator Hoar about the bill when it was under consideration.

In one of his speeches a colloquy ensued between them, in the course of which Senator Sherman said, "I will explain to the Senator from Massachusetts in regard to the bill. It is strange he can not distinguish between the first and second sections. He dislikes the bill so much that he can not state the case fairly."

In his response Senator Hoar denied that he disliked the bill and asserted that on the contrary he liked it very much, but objected to only some of its provisions.

Senator Edmunds said in one of his statements about the matter that it is not important who was the author of the bill. In a certain sense that is true, and yet with respect to a great measure with which the whole country has become familiar it is important to settle such a controversy correctly when it has once been precipitated, especially when to allow unjust claims to go unanswered injustice may be done by denying to those entitled to credit that which is justly their due.

I say what I have said about this matter with less regret because straightening it out not only prevents injustice, but does not detract from the greatness of the public services of Senator Hoar or from the nobility of his character, as exemplified through all the years of his active and virile manhood.

He wrote his autobiography, as Mr. Walker points out, at an age, at a time and under circumstances that of themselves afford an explanation for the error he committed, and it was at this precise time when he wrote me the letters above quoted.

What explains his claim, therefore, in the one case is equally an explanation for his claim in the other.

Every one who knew him knows that in some way unaccountable to those who have examined the record, and probably unaccountable to himself, his recollection became confused and he was led to say what appeared to be an effort on his part to take credit to which he was not entitled and which he did not need, for his measure was full without it, and at the expense of injustice to a deceased colleague with whom he served many years and for whom he always had throughout that service, as often expressed, a profound regard and a sincere admiration.

Senator Hoar, as I knew him, until the very last years of his life, was as incapable of such a wrong and such an injustice as any man I ever knew.

For the purpose of making comparison convenient, the statute, as enacted, and the two bills, as introduced by Senator Sherman, are here reproduced.

Law as enacted.

Be it enacted by the Senate and House of Representatives of the United States of America in Congress Assembled,

SECTION 1. Every contract, combination in the form of trust, or otherwise, or conspiracy, in restraint of trade or commerce among the several States, or with foreign nations, is hereby declared to be illegal. Every person who shall make any such contract or engage in any such combination or conspiracy, shall be deemed guilty of a misdemeanor, and on conviction thereof, shall be punished by fine not exceeding five thousand dollars, or by imprisonment not exceeding one year, or by both said punishments in the discretion of the court.

SEC. 2. Every person who shall monopolize, or attempt to monopolize, or combine or conspire with any other person or persons, to monopolize any part of the trade or commerce among the several States, or with foreign nations, shall be deemed guilty of a misdemeanor, and, on conviction thereof, shall be punished by fine not exceeding five thousand dollars, or by imprisonment not exceeding one year, or by both said punishments, in the discretion of the court.

SEC. 3. Every contract, combination in form of trust or otherwise, or conspiracy, in restraint of trade or commerce in any Territory of the United States or of the District of Columbia, or in restraint of trade or commerce between any such Territory and another, or between any such Territory or Territories and any State

1. The Anti-Trust bill introduced by Mr. Sherman, August 14, 1888, 50th Congress, Senate Number 3445:

Be it enacted, etc.,

That all arrangements, contracts, agreements, trusts, or combinations between persons or corporations made with a view, or which tend, to prevent full and free competition in the production, manufacture, or sale of articles of domestic growth or production, or of the sale of articles imported into the United States, and all arrangements, contracts, agreements, trusts or combinations between persons or corporations designed, or which tend to advance the cost to the consumer of any such articles, are hereby declared to be against public policy, unlawful, and void; and any person or corporation injured or damaged by such arrangement, contract, agreement, trust or corporation may sue for and recover in any court of the United States of competent jurisdiction double the amount of damages suffered by such person or corporation. And any corporation doing business within the United States that acts or takes part in any such arrangement, contract, agreement, trust, or corporation shall forfeit its corporate franchise; and it shall be the duty of the district attorney of the United States of the district in which such corporation exists or does business to institute the proper proceedings to enforce such forfeiture.

or States or the District of Columbia, or with foreign nations, or between the District of Columbia and any State or States or foreign nations, is hereby declared illegal. Every person who shall make any such contract or engage in any such combination or conspiracy, shall be deemed guilty of a misdemeanor, and, on conviction thereof, shall be punished by fine not exceeding five thousand dollars, or by imprisonment not exceeding one year, or by both said punishments, in the discretion of the court.

SEC. 4. The several circuit courts of the United States are hereby invested with jurisdiction to prevent and restrain violations of this act; and it shall be the duty of the several district attorneys of the United States, in their respective districts, under the direction of the Attorney General, to institute proceedings in equity to prevent and restrain such violations. Such proceedings may be by way of petition setting forth the case and praying that such violation shall be enjoined or otherwise prohibited. When the parties complained of shall have been duly notified of such petition the court shall proceed, as soon as may be, to the hearing and determination of the case; and pending such petition and before final decree, the court may at any time make such temporary restraining order or prohibition as shall be deemed just in the premises.

SEC. 5. Whenever it shall appear to the court before which any proceeding under section four of this act may be pending, that the ends of justice require that other parties should be brought before the court,

2. The Anti-Trust bill introduced by Mr. Sherman, December 4, 1889, 51st Congress, Senate Number 1:

Be it enacted, etc.,

That all arrangements, contracts, agreements, trusts, or combinations between persons or corporations with a view, or which tend, to prevent full and free competition in the importation, transportation, or sale of articles imported into the United States, or in the production, manufacture, or sale of articles of domestic growth or production, or domestic raw material that competes with any similar article upon which a duty is levied by the United States, or which shall be transported from one State or Territory to another, and all arrangements, contracts, agreements, trusts, or combinations between persons, or corporations, designed, or which tend, to advance the cost to the consumer of any such articles, are hereby declared to be against public policy, unlawful and void.

SEC. 2. That any person or corporation injured or damaged by such arrangement, contract, agreement, trust, or combination may sue for and recover, in any court of the United States of competent jurisdiction of any person or corporation a party to a combination described in the first section of this act, the full consideration or sum paid by him for any goods, wares and merchandise included in or advanced in price by said combination.

SEC. 3. That all persons entering into any such arrangement, contract, agreement, trust, or combination described in Section 1 of

the court may cause them to be summoned, whether they reside in the district in which the court is held or not; and subpoenas to that end may be served in any district by the marshal thereof.

SEC. 6. Any property owned under any contract or by any combination, or pursuant to any conspiracy (and being the subject thereof) mentioned in section one of this act, and being in the course of transportation from one State to another, or to a foreign country, shall be forfeited to the United States, and may be seized and condemned by like proceedings as those provided by law for the forfeiture, seizure and condemnation of property imported into the United States contrary to law.

SEC. 7. Any person who shall be injured in his business or property by any other person or corporation by reason of anything forbidden or declared to be unlawful by this act, may sue therefor in any circuit court of the United States in the district in which the defendant resides or is found, without respect to the amount in controversy, and shall recover threefold the damages by him sustained, and the costs of suit, including a reasonable attorney's fee.

SEC. 8. That the word "person," or "persons," wherever used in this act shall be deemed to include corporations and associations existing under or authorized by the laws of either the United States, or the law of any of the Territories, the laws of any State, or the laws of any foreign country.

this act, either on his own account or as agent or attorney for another, or as an officer, agent, or stockholder of any corporation, or as a trustee, committee, or in any capacity whatever, shall be guilty of a high misdemeanor, and on conviction thereof in any district or circuit court of the United States shall be subject to a fine of not more than ten thousand dollars, or to imprisonment in the penitentiary for a term of not more than five years, or to both such fine and imprisonment, in the discretion of the court. And it shall be the duty of the district attorney of the United States of the district in which such persons reside to institute the proper proceedings to enforce the provisions of this act.

SPEECH ON CHINESE EXCLUSION BILL.

One of my most carefully prepared speeches in the Senate was made on the Chinese Exclusion bill, April 14, 1902. It was prompted by certain clauses that practically nullified the provisions of our treaties with China in favor of what were known as the exempted classes—merchants, teachers, travelers, students, etc.

I felt that the bill in this respect was in gross violation of our national obligations, and that, if enacted, was calculated not only to discredit us, but also to give rise to serious trouble in our relations with that people, and to work prejudice instead of benefit to the laboring men and farmers of our country, in whose behalf it was claimed that the legislation was proposed. I was surprised to see that Senator Lodge and a number of other Senators, noted for their wisdom and conservatism, were favoring the measure because, as it was whispered about, "the President was behind it." I could not believe that either the President or any of the Senators referred to could be fully informed and, therefore, not in a spirit of opposition to others, but only to prevent what I thought would be a grave mistake, I undertook to make a speech that would set everybody right. In this behalf I reviewed all our different treaties with China from the first negotiated in 1844 down to the date of the proposed legislation.

I endeavored to make it clear that, according to these treaties, only Chinese laborers were prohibited from coming into this country and that the classes mentioned as exempt were not intended to embrace by name all who are exempt, but that the classes mentioned were only illustrative.

In my opening remarks I said:

My objection to this bill, therefore, is not on account of its prohibition of Chinese laborers coming into this country, nor of any provisions contained in this bill for giving effect to that policy of prohibition of Chinese laborers. My objection to it is that in its other provisions—the provisions having reference to what has been termed here the exempted classes—it is, first, in violation of our treaty obligations, and, in the second place, irrespective of our treaty obligations, it is unwise and calculated to do serious injury to the best interests

of this country, and to nobody in this country so much as to the wage-workers of this country.

Some Senators, in discussing this bill, have apparently taken it upon themselves to assume and to speak as though they were the special representatives of the laboring men of this country. Mr. President, if they are, in my judgment they are most mistakenly undertaking to advance the interests of the laboring man. The interests of the laboring man do not lie in the direction of improper treatment of the great Chinese people, and certainly not in a violation of our treaty obligations.

Now, let us see what our treaty rights, stipulations and obligations are. I have taken the trouble, Mr. President, recognizing the importance of this subject—for it is important not only as involving our good name as a great people, but it is important also as involving in a great way the prosperity of this country, especially the prosperity of the men who work in the factories, in the mills, in the foundries, and in the shops of this country—I have taken occasion, in view of that, to look carefully at the entire record. I need not repeat it all. At this stage of the debate Senators are familiar in a general way with our treaty engagements, but I may briefly recapitulate them in order that I may reach by proper approaches what I want to say.

Our first treaty, as all know, was a treaty of peace, amity and commerce with the Chinese nation, entered into in 1844. That treaty continued until 1858, when the treaty now in force was negotiated, ratified and put into operation. I do not mean that it is in force just as it was then adopted, but I mean that that is the basis of all the treaty provisions now in force and effect between China and the United States.

The treaty of 1858 was substituted for the treaty of 1844, except possibly as to some minor provisions. The treaty of 1858 is very long and comprehensive and covers generally the subjects that could be treated of in such an instrument. I do not wish to call attention to any of its provisions except only one article. I refer to Article XXV. I do not call attention to the rest of the treaty because nothing is in the treaty except only in Article XXV that is pertinent to this discussion; that is to say, in this treaty the subject of immigration was not dealt with, neither was the subject of classes dealt with in any manner, but this provision is here. I have not heard anybody call attention to it, and I do so because it is in force and effect this very minute and has been in force and effect from the moment when the treaty of 1858 was adopted. But I will show you how it bears presently on the question that we are compelled here to consider.

Article XXV of the treaty of 1858 reads:

“It shall be lawful for the officers or citizens of the United States to employ scholars and people of any part of China without distinction of persons, to teach any of the languages of the Empire, and to assist in literary labors—”

See how broad it is—

“It shall be lawful for the officers or citizens of the United States to employ scholars and people of any part of China, without dis-

tion of persons, to teach any of the languages of the Empire, and to assist in literary labors."

This was a treaty negotiated at the solicitation of the United States, and that is a provision in behalf of the United States. That is not all. The clause continues:

"And the person so employed shall not for that cause be subject to any injury on the part either of the Government or of individuals; and it shall in like manner be lawful for citizens of the United States to purchase all manner of books in China."

Mr. President, that provision of the treaty of 1858 has never been under consideration by the treaty-making representatives of the two Governments since the moment when it was adopted; it stands today as the supreme law of this land. Any citizen of the United States has a right by that treaty to employ, and any person in China has a right, if a person in the United States sees fit to exercise his right, to accept employment as a scholar or as a literary man, to assist in any kind of literary labor in the United States and to come to the United States for that purpose. Let us bear that in mind.

MR. LODGE: Will the Senator allow me to ask him a question?

MR. FORAKER: Certainly.

MR. LODGE: Does that clause provide that this employment shall be in the United States?

MR. FORAKER: It does not in express words say that the person so employed shall come to the United States, but, Mr. President, what avail is it to me here in the United States to have a right to employ a Chinese scholar or literary man to assist me in literary labor or to teach the Chinese language, unless I can bring him to the United States, where I am likely to want such person and to utilize him; and for the Senator to suggest that this means nothing more than that a citizen of the United States going to China, and being there may there employ a man to assist him in literary labor is, it seems to me, entirely unwarranted.

MR. LODGE: I only asked if it was expressly stated.

MR. FORAKER: No; I say it is not expressly stated. But I submit that there is no room for argument as to what is intended, and the right is given and broadly given to the Chinese on the one hand to employ Americans and American teachers and American people of literary qualities to assist them, and then, reciprocally, the right is given to the people of the United States to employ that class of Chinese people. That provision is now in force. That was the treaty of 1858, and without further comment I pass from it to the next treaty, which is known as the "Burlingame treaty."

The Burlingame Treaty was entered into in 1868. I reviewed its provisions, stating the result as follows:

Down to and including the treaty of 1868 we have this status resulting from our treaties, that everybody in China, a subject of the Empire, who may want to come to the United States has the free and unrestricted right to come, and the Chinese have the right to establish

and conduct educational institutions here. We exercised our reciprocal right to do that. I do not know how many American institutions there are in China maintained today, but there are more than one. The Chinese would have the right to have any number they might see fit to have in this country because of that clause of the treaty. Nobody has ever suggested a modification of it.

So much for the treaty of 1868, which let everybody in. The Chinese proceeded to avail themselves of that privilege, and it was not long until we recognized that a mistake had been made—a mistake in this, and in this alone, that the unrestricted immigration into this country of laborers was prejudicial to our body politic and to our best interests.

I then pointed out that to remedy this evil the Treaty of 1880 was negotiated, of which I spoke as follows:

ARTICLE II.

“Chinese subjects, whether proceeding to the United States as teachers, students, merchants or travelers from curiosity, together with their body and household servants, and Chinese laborers who are now in the United States shall be allowed to go and come of their own free will and accord, and shall be accorded all the rights, privileges, immunities and exemptions which are accorded to the citizens and subjects of the most favored nation.”

I say it has been contended in this debate that because in Article II teachers, students, merchants and travelers are enumerated no other classes of people who are not laborers can come in. In other words, because of the recitation here in this way of these facts and the repetition of them in the treaty of 1894, bankers, brokers, civil engineers, every other class of educated men, the great publicists (and they have some of the greatest in the world), and all of their great literary men are excluded; that unless a man is a teacher, unless he is a student, unless he is a traveler, unless he is a merchant, coming within the definition given in this bill, and in certain Treasury regulations which have been relied upon as law, but which I will undertake to show are in open violation of our treaty obligations, he can not come in, narrowing it so that if China were to treat us reciprocally she would have a right, if we pass this bill, to say that inasmuch as the United States, by its Congress, has enacted that no minister, no physician, no engineer, no broker, no salesman, no clerk, no learned man of any character or description shall come into the United States, neither shall any such man come into China from the United States.

MR. PLATT of Connecticut: Under this construction of the law and treaties and this bill would it have been possible for Li Hung Chang to have come to the United States?

MR. FORAKER: Not at all.

MR. PLATT of Connecticut: Except as an official?

MR. FORAKER: Except as an official. Independently of his official character, Li Hung Chang could not have come. He is not a teacher, he is not a student, he is not a merchant, he is not a traveler within the definition given in this bill.

He could not have come here; and I say if China were to treat us reciprocally—and by what authority do Senators say she would not treat us reciprocally if we enact such legislation as this—she would, by an edict, which could be issued in an hour's time by the Emperor, debar from China every missionary who is there, shut up every educational institution we have there, shut out every civil engineer we have there engaged in carrying on American work, in which American capital has been invested. We are building railroads there. We are spending millions of dollars in China. They could drive every American out, if they would only act reciprocally. That is all they would have to do. Who has the right to say they would not do it? Why should they not mete out to us our measure to them?

Summing up, I said:

My contention is, therefore, Mr. President, that after the treaty of 1880 had been negotiated and put into operation our status was this: We had a treaty of peace, amity and commerce with China, under which they had a right to come into this country subject to this restriction, that laborers could not come if we saw fit to suspend the right, but that all other classes had a right to come of their own free will and accord—teachers, merchants, travelers for curiosity, officials, students, publicists, physicians, theologians, Confucians, philosophers, anybody who might see fit to come, who was of a class of citizens in China not included within the broad term of laborer.

I dealt with the whole subject in detail, and elaborately. The speech covers thirty odd pages of the *Congressional Record*.

I closed with the presentation of the commercial or business view of the subject, pointing out in that connection the acute interest of the wage workers and the farmers of our country in the subject under consideration, contending that for the future we would need the markets of the Orient more than we had ever had need of them before in which to dispose of our surplus products of the farm and of the workshops, and that it would be most unwise to create a prejudice against us, as we surely would, not only because of the hostility it would indicate on our part toward the Chinese, but also because of the faithlessness it would brand us with in the keeping of our treaty obligations.

I said on this subject:

But, Mr. President, there is another view, and I wish to present it with a word, not undertaking to do justice to it by any means. That is the commercial side of this question which has been referred

to. We have been told in the progress of this debate that the laboring interests of this country demand this kind of legislation. Mr. President, I have no doubt but that there are wage-workers in this country who have that opinion, who conscientiously are of that belief, who imagine that every Chinaman who comes into this country, no matter whether he is a laborer or not, enters in some manner or other into prejudicial competition with him. But, sir, I deny that the interest of the wage-worker can be subserved by legislating in violation of our treaty with China and in such a way as to cut off from this country the influx of the educated classes who are entitled to come.

We have reached in the progress of our development a point where we not only supply our home markets with what we manufacture and what we produce on our farms and out of our mines, but we have a great surplus to sell, which we must sell in the markets of the world. We have been looking across the Atlantic to Europe for markets, and we will continue to look there. But in Europe they will take from us only what little, in addition to what they can produce for themselves, they may want, and that is not enough to exhaust our surplus.

We must look elsewhere, to the whole world—and particularly to the Far East, now that we have a base of operations in the Philippines—to China, Japan, Oceania, the Straits Settlements, and Southern India. They have there a thousand millions of people who are just beginning to learn that they want and must have—if they would keep pace, even in their own way, with the progress of the world—that which we produce, both to wear and to use and to eat.

In China, therefore, the greatest of all the countries to which I have referred, is the greatest opportunity for the development of a market that the world affords today. It has been said there are 400,000,000 Chinamen. You might just as well say there are 600,000,000. Nobody knows. It is all guesswork. There has been no census, but nobody says there are less than 400,000,000 to 450,000,000 Chinamen. What is the trade of China? It is only a few years since she began to trade with the world. Already her foreign trade amounts to more than \$100,000,000, but out of it all, whatever it may be—and I do not want to go into figures and quote them—we sell there less than ten per cent., I believe, of what she buys. Why should we sell to China only ten per cent.?

MR. LODGE: Mr. President—

The PRESIDENT *pro tempore*: Does the Senator from Ohio yield to the Senator from Massachusetts?

MR. FORAKER: Certainly.

MR. LODGE: That is based upon direct imports to China. The exports to Hongkong, which of course all go into distribution in China, are classified under a different head, because it is British. The two together make about \$28,000,000.

MR. FORAKER: Let it be \$28,000,000. What percentage is that of the whole?

MR. LODGE: It is large and will be greater.

MR. FORAKER: What percentage is that of the whole?

MR. LODGE: I do not know.

MR. FORAKER: I have seen it stated that our total contribution is something like ten per cent. The Senator from Vermont (Mr. Dillingham) tells me that our total contribution amounts to only about one-tenth as much as Great Britain sells them. Whatever the facts may be, we all know that while our trade with China is growing, yet it is but in its infancy. We all know that we have just reached the point where we have a great surplus for which we are to find markets. There is no place in the world so inviting as China. We are to develop our trade there if we are wise.

In that behalf, Mr. President, with a diplomacy that is entitled to the highest eulogy, the administration of William McKinley secured the assurance of an open door. What does that mean? It means that the United States is to be permitted to go into China on the same terms and conditions that every other nation goes there; that Russia, France, England, Germany are to have no advantage over us to be derived by rebates or exclusion or in any other manner.

We are to have an open, free field, and that is all the American merchants ask. If we have a fair chance our merchants have the ability to do the balance. We have been looking forward with a just and laudable pride to the fact that our commerce with China, just now practically beginning to be important, is to grow with the years until it will not be \$28,000,000, as the Senator from Massachusetts says it is, but \$100,000,000, \$200,000,000, \$500,000,000 is not at all an exaggerated expectation.

When was there a time in the history of this Republic when we so needed that market? The wage worker says, "Keep the Chinaman out; do not let him come here and stand by my side to compete with his cheap labor;" and we say, "Very well, we will keep him out." But while we are keeping the laborer out, while we have induced the Government of China to agree with us that he shall be kept out, we are not going to offend and insult the people of China and thus close in our face the door that President McKinley and Secretary Hay, with their wise diplomacy, opened wide for the American merchant and manufacturer and wage worker.

What does the wage worker want? He wants a market for this country in which we can sell the products that he manufactures.

I have no concern about how the wage workers of Ohio may regard this measure. They have good sense. I think the wage worker everywhere has good sense. A man can not work at a lathe unless he has brains. A man can not be a mechanic without having more ability than some people have who undertake to legislate.

I repeat that I have no concern, Mr. President, about the wage-workers of Ohio. They know that what they most desire is that the factories in which they work, the mills in which they are employed, may continue to run; that their employers may continue to have demand for the product which they are turning out. They know that if for any reason the market is taken away the mill must stop, and it does not avail them in such case that the Chinese laborer has been kept out, if through supreme folly in legislation we have closed the door and robbed ourselves of a market and at the same time robbed ourselves of the respect of the world, because we have violated our treaty obligation.

Therefore it is, for I do not want to pursue this matter, that standing here, representing in part the State to which I have referred, I insist that the legislation as proposed by the provisions of this bill is legislation that we can not afford to enact.

As a result of the debate the Senate adopted the substitute offered by Senator Platt of Connecticut, for which I had been speaking, which did not contain any of the obnoxious provisions that had prompted my speech. Thereupon the Senate took up a bill on the same subject that had been passed by the House and incorporated Senator Platt's substitute, and then passed it. This House Bill thus amended was finally enacted and the obnoxious Senate Bill was indefinitely postponed.

His Excellency, Wu Ting Fang, at that time Chinese Minister to the United States, was greatly pleased with the defense I had made of China's Treaty rights and thanked me accordingly. Later, July 18, 1902, when re-called, he wrote me as follows:

CHINESE LEGATION.
WASHINGTON.

July 18, 1902.

My Dear Mr. Senator:—I want to thank you and your family for your expression of regret at hearing the news of my approaching departure from this country. It will be the deep regret of Madame Wu and myself to have to part with the many warm friends we have found in this country, especially you and your family, with whom we have had such pleasant and charming relations.

You, Mr. Senator, I shall always remember with pleasure and gratitude, not only as a warm personal friend, but also as a valuable friend of China. I can also say that the Chinese people when they come to know it, will ever be grateful for the noble stand you took in defense of their treaty rights on the floor of the Senate at the same time that you championed the cause of justice and fair play, consistent with the best interests of the United States.

Madame Wu, who is at Atlantic City, will regret with me that we did not have the pleasure of seeing you and your family again before you left here for the summer.

With kind regards to you and your family, I remain,

Yours very truly,
WU TING FANG.

Citizens generally of the United States who paid any attention to the subject were pleased, without regard to party affiliation, and many of them took occasion to con-

gratulate me upon the good work I had done in speaking as I did.

In June, 1905, the Honorable William H. Taft, then Secretary of War, made a speech at Oxford, Ohio, on the Chinese question. A newspaper account I read of it was somewhat meagre. It indicated that the Secretary did not have before him some of the data I had collected and used in the Senate. My relations to him and my interest in the subject were such that I took the liberty of writing him as follows:

CINCINNATI, OHIO, June 19, 1905.

HON. WILLIAM H. TAFT,
War Department,
Washington, D. C.

My Dear Mr. Secretary:—I read with very much interest your remarks at Oxford on the Chinese question, and have since read some of the criticisms coming from the labor organizations of the Pacific Coast that have been published in the newspapers. In view of all this I take the liberty of sending you, under a separate cover, a copy of a speech I made in the Senate on that subject, April 14, 1902. If you ever have time to glance at it you will find there, I think, a review of the whole subject, that it may be handy to have at your command if you have ever any occasion to again speak on that line.

Hastily, but with kindest regards, I remain,

Very truly yours, etc.,

J. B. FORAKER.

To which he responded as follows:

WAR DEPARTMENT,
WASHINGTON.

June 21, 1905.

My Dear Senator:—I knew that I had your sympathy in what I was to say in respect to the Chinese question at Oxford, and I thank you very much for sending me your speech on that subject, which shows the absurdity of the treatment to which we have been subjecting Chinese merchants. To no two people do the Chinese owe so much as to you and Senator Hoar for the fight you made in the Senate in behalf of decency in treatment of that nation, which is most important to us for commerce.

Very sincerely yours,

WM. H. TAFT.

HON. J. B. FORAKER,
United States Senate.

ANSWER TO CHARGES MADE AGAINST GOVERNOR TAFT.

May 3, 1903, the Senate had under consideration the conditions existing in the Philippine Islands. The Senate

Committee on the Philippines had been taking testimony with respect thereto, and among other witnesses examined was William H. Taft, at that time Governor of the Philippines.

Senator Culberson, a member of the Philippine Committee, in the course of this debate, took occasion to charge that Mr. Taft, in giving his testimony, had withheld information to which the committee was entitled, and that his testimony was in other respects evasive and misleading. These charges were made with so much earnestness and with so much apparent support from documents quoted by the Senator, that I felt some one should make a stronger defense than any one was making. Although not a member of the committee, I took up the cudgel and handled it rather vigorously and to the entire satisfaction of Governor Taft, who thanked me most earnestly for defending him as I did, and probably upon the principle that one good turn deserves another, told me later in 1906, after he had testified before the Canal Committee, that he was hoping I would look at his testimony with a view to protecting him in the Senate if any unfriendly comments were made on what he had said. I told him if he would send me a copy of his testimony I would try to look it over and take care of him if he should be attacked. Accordingly he sent me the following:

WAR DEPARTMENT,
WASHINGTON, D. C.

April 22, 1906.

My Dear Senator:—I promised to send you my statement before the Canal Committee. I should be exceedingly thankful to you if you could read it over in order to make yourself familiar with the facts which are likely to be commented on, and, I may add, perverted in any discussion which will arise in the Senate.

Very sincerely yours,
WM. H. TAFT.

The nature of the charges made by Senator Culberson and the character of my defense will sufficiently appear from the following brief quotations from the *Record*:

MR. FORAKER: Mr. President, the Senator from Texas (Mr. Culberson) has talked to us about a lack of candor, lack of frankness, about evasion, about intentional suppression of the truth, and has charged all

these offenses to Governor Taft. I have the highest respect for the Senator from Texas. I believe that he thinks he believes everything that he says. But, Mr. President, he has said some things here which I am sure he will not adhere to when his attention is called to the record from which he has quoted. He has told us not only once, but repeatedly, in the course of the remarks he has just made that when Governor Taft made the answers to his questions which he read from page 293 of this record, he had in his possession these two reports, one from Major Gardener and the other from the secretary of the province of Batangas.

MR. CULBERSON: I said he had them in his possession or subject to his control in the War Department.

MR. FORAKER: At one time the Senator added that qualification but when he was answering the Senator from Indiana (Mr. Fairbanks) he said without any qualification whatever that the trouble with Governor Taft's answer was that when he said he had given these reports to the Secretary of War, he had in his possession two reports which he was withholding; and he not only said he was withholding these reports, but he said he was withholding these reports for the purpose of keeping the truth from the Committee that had a right to the reports. I may not quote his exact words, but I do not exaggerate the statement the Senator from Texas made. I think I have quoted almost identically the language that he employed.

Now, what is the truth? That testimony was given by Governor Taft on the 14th day of February, 1902, before the committee. In his letter which I read a moment ago, when I last had the floor, Governor Taft tells us that on the 7th day of February, seven days before that time—in response to an order made upon him by the Secretary of War, whose order he was bound to obey—he had transmitted both these reports to the Secretary of War.

Now, Mr. President, we have it in the record upon this statement of Governor Taft that he did not act voluntarily, but by direction of the Secretary of War. While the Senator from Texas talks as though he did not want to believe him, I submit that other Senators here will believe him, for no man who has ever known Governor Taft has ever, so far as I am aware, questioned his candor or his frankness down until this occurrence. If there is a man in all the world absolutely faithful to the truth in any statement that he may make, and conservative in the statement of it, that man is Governor William H. Taft. I have known him all his life. I know whereof I speak when I pay to him that high compliment, for a high compliment it is.

Now, here is his statement in this record. It is a statement that when he arrived here, having received these reports at the steamer, not knowing anything about them until while he was on his voyage, he acquainted the Secretary of War with them, as it was his duty to do, he being his superior officer to whom he must make report. Thereupon the Secretary directed him to deliver these reports to him in order that he might order an investigation, which it at once occurred to them ought to be made as to the truthfulness of these charges.

Mr. President, the only criticism the Senator from Texas, it seems to me, has any right to make on Governor Taft is that when he was being examined on this point he did not volunteer to him the information that a report had been received from one of the unpacified provinces of which mention is made. That is explained by the fact that he had been required by the Secretary of War to turn that report over to the Secretary of War in order that the Secretary might order an investigation, and have it conducted, of the charges therein made. I can understand how the Senator might think that Governor Taft ought to have said that, but, knowing the character of Governor Taft as I do, I know that it never occurred to him that he was evading anything when giving his testimony.

It seems to me that, on the contrary, his frankness is marked by statements that indicate that he was not withholding anything, but that he was verbally painting a picture of the conditions exactly as they existed; and it is no breach of confidence for me to say that, in the course of a conversation I happened to have with Governor Taft while he was on the stand as a witness—I do not mean while he was on the stand actually testifying, but I mean during the period while he was in attendance upon the committee—he said to me that he had no responsibility for consequences, and the truth, the whole truth, and nothing but the truth, would be the statement he should make on any question he might be asked about. I know it never occurred to him that he was withholding any truth; it never occurred to him that he was evading the point of any question the Senator from Texas or any other Senator was asking him or might ask him.

Therefore, I submit, Mr. President, that Governor Taft can not be charged here in the Senate, after the full and frank and truthful—manifestly truthful—statements made, with attempting to evade or with a lack of candor, or with misleading the committee, for he expressly stated to the committee, and the committee was given to understand—and it was not the fault of Judge Taft if they did not understand—that he was speaking only of the pacified provinces, and not of Batangas, Laguna, Tayabas and Samar; and when he made that announcement to the committee any fair-minded man should have concluded that Governor Taft had a right to believe that every man on that committee would know that the questions propounded to him, unless they were specified otherwise, would have direct relation to the provinces about which he was testifying and concerning which he had a special responsibility.

THE PHILIPPINE TARIFF.

About this time the Philippine situation was almost constantly under consideration in the Senate, first on one account and then on another.

I shall not undertake to mention all the occasions I had to participate in the debate, but I take some pleasure in calling attention to the speeches I made May 12th and

June 2nd, 1902, in which I reviewed the whole Philippine situation from the battle of Manila Harbor to that date, explaining and defending our policies, and that I repeatedly spoke, as often as occasion arose, in favor of fixing tariff duties on importations into the United States from the Philippines at not more than 25 per cent. of the rates prescribed by the Dingley Tariff law then in force, instead of 75 per cent. of those rates, as many Republican Senators contended they should be, and that the 25 per cent. so collected should go into the Philippine treasury for their benefit instead of into our treasury for our benefit, urging always that the Philippines, having become our possessions, should be treated accordingly; that no matter how good a government we gave them, nor how capable, honest and efficient were the officials selected to administer that government, the Filipinos would not be happy and satisfied therewith unless they could have prosperity, and that they could not have prosperity unless they had markets in which to sell their surplus products, and revenue enough to support their government without burdensome taxes at a time when unable to pay them.

I was surprised and disappointed when this policy was opposed by many Republicans with whom I was generally in accord, but it finally prevailed, and its wisdom has been abundantly vindicated by the results that have followed.

STATEHOOD FOR ARIZONA, NEW MEXICO AND OKLAHOMA.

I was a member of the Committee on Resolutions that framed the platform adopted by the National Republican Convention at Philadelphia in 1900, and also a member of the sub-committee. That platform contained a plank pledging the Republican Party to favor the admission of the remaining territories to Statehood. Accordingly, when a bill came to the Senate from the House so providing, I was astonished to find bitter opposition among some of the leading Republicans of that body. The speeches made by them in opposition were in large part offensive in character to the people of those territories, and almost so to all who were friendly to the Statehood proposition.

In view of my relation to the platform declaration I felt it my duty to carefully investigate the subject, and lay before the Senate the results of such investigation. It seemed to me there was every good reason, according to precedent, and consistently with all reasonable deduction from existing and what promised to be future conditions why, with a correction of some minor details, the general proposition of Statehood should be favorably acted upon.

Accordingly in January, 1903 (15th and 19th) I spoke at great length in favor of the bill. In this speech I reviewed the whole subject of the admission of territories to Statehood from the beginning of our government down to that time. I reviewed carefully all the precedents, pointing out in some cases distinctions that had arisen with respect to the rules followed growing out of the effect of the Ordinance of 1787 as to the States carved out of the Northwest Territory and the rules established by Congress as to territory to which the Ordinance of 1787 did not apply.

I also showed from official statistics that each of the territories had sufficient area, sufficient wealth, and sufficient population to entitle it to admission as a State in the Union, whether the rule to be applied was that established by the Ordinance of 1787 or the rule established by Congress as to territory to which that Ordinance did not apply. But all in vain. The bill failed.

In the next Congress the enemies of Statehood took a different course. Instead of contenting themselves with opposition to bills providing that the territories should be admitted to separate Statehood, they sent from the House to the Senate a bill providing for joint Statehood for Oklahoma and the Indian Territory, and joint Statehood for Arizona and New Mexico.

So far as Oklahoma and the Indian Territory were concerned, there was no serious objection to what was proposed on the part of anybody. In so far as there was any objection at all it was confined to minor details.

But as to Arizona and New Mexico I felt that the whole movement was ill advised, calculated to discredit the Repub-

lican Party and inflict a gross and irreparable outrage on the people of both these territories.

I felt indignant because of the character of the proposition, but the speeches made in support of it were even more offensive than those made in opposition to the bill providing for separate Statehood considered in the former Congress.

I made up my mind to defeat the measure if possible. In this behalf I offered an amendment providing for a referendum under which the electors of each territory would have a right to vote on the subject and providing that the bill for joint Statehood should not become effective unless a majority of the electors of each territory voted therefor.

The point of the referendum was not that the electors in the two territories should have the right to vote on the question of Statehood, but that there should be a majority for joint Statehood in each of the territories. It was indicated in the early stages of the controversy that New Mexico had been so long contending for Statehood that her people were becoming impatient, and were, perhaps, willing to submit to joint Statehood against their preference for separate Statehood, rather than have no Statehood at all, especially in view of the fact that, having a larger population, such consolidation would be like a swallowing up of Arizona in all but the name to be given the new State.

Speaking in favor of this amendment, and in opposition to joint Statehood, I said, in a long speech, in which I reviewed all the objections that had been offered to separate Statehood, and all the arguments that had been made in favor of joint Statehood, that I was opposed to joint Statehood, because, among other reasons:—

It is a departure. I desire to call the attention of Senators to the fact that this is the first time, I believe, since the beginning of our Government when in admitting a Territory to statehood we have compelled it to unite with any other Territory. We have done just the opposite in many instances. Vermont, the first State we admitted, was separated from New York. Tennessee and Mississippi, as well as other States, were carved out of the Territory South of the River Ohio, and when we came to make States of the Territory Northwest of the River Ohio we made, in the first instance, three, with permission to make two more; and, to avoid having States too large in area, we subsequently

admitted Michigan and Wisconsin as separate States, dividing the Northwest Territory into five such subdivisions. When West Virginia was made a State she was taken away from old Virginia. So as to the territory acquired from Mexico. The States of Utah, Nevada and other States were carved out of that territory; and when we came to make these Territories we first made the Territory of New Mexico, in the fifties, and then, in 1863, we made the Territory of Arizona by separating it from New Mexico. We have pursued this policy in every instance, because we have had regard to the fact that States might be made larger than they should be.

We have constantly been cited, during the progress of this debate, to Texas. We have been told that Texas is larger than any State in the Union, and larger than one State made from these two Territories would be. But it must be remembered that when Texas was admitted it was provided that she might be divided into four additional States. She may never take advantage of that provision, but it indicates what the opinion of our predecessors was, and it indicates the character of precedent they have set in this matter.

Now, this is the first instance I can recall—if I am in error some Senator will, no doubt, correct me—where we have undertaken, after we have set up separate Territorial government with area and advantages sufficient for statehood, to join them together. It is certainly the first instance where we have undertaken to join them together without regard to their own preferences in the premises.

Now how large is the area of this proposed State? I wish Senators to try to form in their minds a picture of the extent of this proposed State. I have been making some figures about it. I find that the whole of it will be as large in area as all New England, with New York, Pennsylvania, New Jersey, Delaware, Maryland, West Virginia and three-fourths of Ohio. Now, just think of that as one State! I have been told that a citizen residing in the southeastern portion of this proposed State, having occasion to go to Santa Fe, the capital provided by this measure, will have to travel about as far as from Keokuk, Iowa, to the city of New York. This proposed State will be twenty-five times larger than the State of Vermont, twenty-five times larger than the State of New Jersey, thirty times larger than the State of Massachusetts, sixty times larger than the State of Connecticut, 117 times larger than the State of Delaware, and 188 times larger than the State of Rhode Island. It seems to me, Mr. President, that the mere statement of these facts should be enough to satisfy every Senator that, if we admit those Territories joined together as one State, the people living in that State will not be able to economically enjoy their State government. They will necessarily be subjected to all kinds of inconveniences in connection with State matters.

In another speech made in opposition to this same bill, I said, speaking of the qualifications of these territories for Statehood:

There are in the Territory of New Mexico 300,000 people. I think I would be justified in saying 350,000 people, but certainly it is conser-

vative to say 800,000 people. This people have produced wealth there to the amount of more than \$350,000,000. They have 3,000 miles of railroads constructed and in operation. They have more than \$10,000,000 invested as capital in banking institutions of the Territory. They have seventy-five newspapers. They have over 800 schools, in which their children are being educated. They own more than \$2,000,000 of school property. They have State universities, colleges, great normal institutions, and, as I have already indicated, one of the best school systems that can be found in any community in all this country.

They are making rapid progress. Their progress for a time was indeed slow. But the reason for that has already been pointed out. Not until the last twenty-four months have the titles to their lands been settled through the action of the Court of Private Land Claims which the Government established there some ten years ago. Now men are taking homesteads, building up farms, and engaging in other industries. Almost every vocation is well represented. They have not only agriculture and mining, but they have cattle raising and nearly all of their territory is being employed in some useful way.

Now, as to the character of their people. It has been said that half of them speak only the Spanish language. That I think is an overstatement. About half of them, perhaps a little more than a majority, are Spanish-Americans, but the great body of Spanish-Americans understand the English language, and most of them who participate in public affairs speak the English language as well as the Spanish language.

It is sufficient, without giving its parliamentary history, to say the bill failed.

Undaunted, the champions of joint Statehood again brought forward practically the same measure in the next Congress.

Again I offered practically the same amendment in legal effect, though probably somewhat different in phraseology, and, after a thorough and almost acriminious debate, it was adopted by a vote of 42 yeas, 29 nays.

The bill passed with my amendment incorporated; the referendum was had, November 6, 1906, with the result that Arizona's vote stood, nays, 16,265, yeas, 3,141, or a majority against joint Statehood of 13,124; while New Mexico's vote stood, yeas, 26,195, nays, 14,735, or a majority for joint Statehood of 11,460.

With this result before them, the National Republican Convention of 1908, controlled absolutely by President Roosevelt and Mr. Taft, and their supporters and followers, completely vindicated my position and all I had contended

for in the whole Statehood fight from the beginning until the end, by adopting as a part of the platform on which Mr. Taft was elected to the Presidency, the following declaration:

We favor the immediate admission of the territories of New Mexico and Arizona as separate States in the Union.

Of course! Why not?

Such admission to the Union followed in due time under an enabling act passed by Congress in June, 1910. Both territories are now States of the Union and both are enjoying a growth, development and general prosperity even greater than was predicted for them in the debates in Congress in the event they were given Statehood.

Any one familiar with the history of that struggle will, I think, agree that, except for the fight I made, the two States of New Mexico and Arizona would have been consolidated into one and admitted as Arizona. I have confidence that what I did in this respect will sometime be appreciated as an important public service to the people of those States and the whole country.

THE SECESSION OF PANAMA.

In a rather ill-natured speech, made December 17, 1903, Senator Hoar criticized the action of President Roosevelt in recognizing the Republic of Panama, and in effect at least, very plainly charged him with responsibility for the secession of Panama from the Republic of Colombia.

I was not aware until he commenced his address that he intended making any speech, and, of course, had no advance knowledge of the character of speech he would make. I had no thought of answering him until Senator Platt of Connecticut came to my seat, while Senator Hoar was speaking and told me he and other Republican Senators thought somebody ought to answer the Senator immediately, so that both speeches might go out to the press together and that a number of the Senators to whom he had expressed

the same opinion agreed with him, and that I should assume that responsibility.

Most reluctantly I consented—reluctantly because I remembered that Mr. Hoar felt somewhat offended by our debate over the Philippine Treason and Sedition Act, and in view of the character of speech he was making, I felt it would be necessary to take pretty sharp issue with him on some points, and I feared if I did so he might again feel aggrieved; and such was the result. But later our friendship became as cordial as ever, and so continued until his death, when I attended his funeral as one of the committee appointed to represent the Senate on that occasion.

In view of the treaty negotiated by Mr. Bryan and now (1915) pending in the Senate, providing for the payment of \$25,000,000 to Colombia as indemnity for the secession of Panama, and embodying in addition what is practically an apology, my speech on this occasion has a current interest on account of which I quote from it as follows:

Now, Mr. President, having said that much in a prefatory way, I want to say something about the merit of this transaction which has been so severely criticised by the Senator from Massachusetts. He reads a lot of telegrams and draws therefrom an inference, which he states as his conclusion, to the effect that this Government, although denying, as it has been denied over and over again, any part whatever in any connivance or intrigue in regard to the matter, was yet proceeding in such a way that no other conclusion could be deduced therefrom.

Mr. President, as I read these telegrams in the light of our duty and obligation to Panama with respect to the transit across the Isthmus, I see no occasion to draw therefrom any inference except only that the President of the United States was alert to do, in a patriotic way, his duty as the President of the United States.

What I was proceeding to say when the Senator from Massachusetts interrupted me was this, Mr. President. That the situation in Panama was one as to which there was common knowledge to all informed newspaper-reading people throughout this country. When we ratified the treaty providing for the construction of the canal across the Isthmus and sent it to the United States of Colombia for ratification, we did that pursuant to other steps which had been previously taken. Let us recall what they were.

In the first place, Mr. President, when it was resolved that we would build an isthmian canal, negotiations were entered into not only with

Colombia but with Costa Rica and with Nicaragua. Then protocols were signed with all those countries. A protocol was signed with Colombia, one condition of which was that we should pay her \$7,000,000 if finally we determined that we would accept the Panama route. We then undertook the negotiation of a treaty with Colombia in accordance with the terms and conditions of that protocol; but when we had turned from the Nicaragua route and had accepted the Colombia route, and had expressed our preference for it, Colombia did not seem willing to make a treaty with us in accordance with her protocol.

Instead of a cash payment of \$7,000,000, she demanded the payment of \$10,000,000 in cash. She exacted from us other terms and conditions that were severely criticised in this Chamber, but finally, after a long debate, the treaty was ratified. We sent it there. That treaty embodied every demand that Colombia had made of us, whether of money or other kind of terms and conditions. What happened? Instead of ratifying it with these increased payments and other terms and conditions that she had demanded and we had generously granted, months passed, when finally the treaty was rejected unanimously, without any consideration whatever having been given to it by the ratifying power of Colombia.

No official explanation was offered to this Government for such action. The only explanation ever given was an informal explanation given out by a distinguished citizen of Colombia, who apparently journeyed all the way from Colombia to New York to give us that information. He gave it in the shape of a newspaper interview, in which he announced that they could not agree to the treaty unless we struck out \$10,000,000 and inserted \$25,000,000.

The very moment we sent that treaty to the United States of Colombia for action there, for them to ratify it, there was evidenced a disposition unfriendly to it, a disposition that grew stronger and stronger in its manifestation, until finally the rejection came.

What did that mean to Panama? Take a map and look at it—a mere isthmus, as it is properly called. Colombia situated in South America; Panama as disconnected as a State could possibly be, both by water and by the nature of the land that intervened. To that little Department of Panama the construction of the canal at that point meant the most important advantage to her that you could possibly conceive. For that canal not to be constructed there, but to be constructed at some other place, meant the most positive disadvantage to her.

She was intensely in favor, therefore, of this canal being constructed at that place, and in favor, therefore, of the ratification of that treaty. But despite all she could do the treaty was rejected. At once it became known through the newspapers—not by any agent sent here or sent elsewhere, but as common knowledge, reported by the Associated Press and otherwise—that the people of Panama were in a state of discontent and that they would not submit to such disregard of their interests by the Government under which they were then living. It became at once known, in other words, that she was proposing to secede and set up an independent government for herself.

That was published everywhere. I read of it. I spoke about it in public speech during the campaign in Ohio. No agent came to the

President of the United States. The President of the United States sent no agent to Panama. It was not necessary. Panama was acting in her own interest. She was exercising her right to object to the action of her Government, and her Government persisting in wronging her, she had a right, if she saw fit, to go into rebellion.

In other words, weeks before she declared her independence it became known that she would take that step—not officially, but it became known to every man who studied the situation and considered what human nature would do under such circumstances. The clouds were gathering. Should the United States, through its Administration at Washington, be unmindful of that fact? Not at all. It was our duty to be watchful with respect to it under any circumstances, but particularly so in view of our obligations to preserve that transit free from interruption.

Ever since 1846, when the treaty between this Government and New Granada, as that country was then called, was entered into, we have been under that obligation. Time and again we have landed our marines to preserve order and to protect that transit from interruption and embarrassment. Repeatedly we have done that at the request of Colombia; we have done it in a number of instances on our own motion. The President of the United States, seeing the storm coming, seeing the action that was threatened, remembering his obligation to preserve peace and order and protect that transit from interruption, but did his duty in taking all preliminary necessary steps to preserve order when such a contingency should arise.

Mr. President, as is suggested to me, suppose he had not done it; suppose the rebellion had come; that secession had been accomplished; that war had ensued, and all the results that accompany war had followed, what would have been the criticism then of our friends on the other side? It would have been a criticism, not that the President had acted precipitately, not that he had acted without cause, but that he had not acted at all; that he had lost the canal after the United States had expressed her preference for it, and after the people of the whole country, without regard to party and without regard to section, had demanded it.

But, Mr. President, it was in view of just such a contingency, not knowing what might happen, but to be prepared for the worst and to discharge our duty in any event, that the President took the steps indicated by the telegrams read by the Senator from Massachusetts, from which he derives such criticising conclusions.

We are given the date when the secession occurred; we are given the date when the recognition was accorded, and we are asked to believe, if we agree with the Senator from Massachusetts, that there was inordinate haste, indecent haste, in granting that recognition.

What are the facts? What are the precedents, first? In 1871, when the Republic of France was established, we recognized it immediately. We did not wait a day, or two days, nor three days, nor five days, or any other length of time. It was established one day. The date of our cablegram instructing Minister Washburne to recognize the Republic of France was dated the next day. That apparent delay of a day was only because of the difference of time. It was sent in the evening. It

was already the next day when it got here and was answered. France had no Constitution, but it was not a humming bird (as Mr. Hoar had said of Panama) or any other thing of a diminutive character, but a great, mighty people, forty millions or more, who had set up a Republic dedicated to freedom and to human liberty, and this great Republic at once responded with recognition.

MR. ALDRICH: We did not even ask France, as I remember, whether the Government which had been overthrown consented.

MR. FORAKER: No.

Now, in 1873 they established a Republic in Spain. There was no delay. Immediately our minister there, General Sickles, was advised by our Government to recognize, and he did recognize, the Republic of Spain. Later, when the Emperor of Brazil was deposed, the Republic that followed him was instantly recognized, and other examples might be cited.

Mr. President, there was no reason in the case of France or Spain or Brazil for precipitate or hasty action; we had no special duties there; but in the case of the Republic of Panama it was different. What are the conditions, according to international law, that are sufficient to justify us in instantly recognizing a new government, as we did in the case of France, Spain and Brazil?

The only condition necessary—and it does not make any difference, in the language of the Senator from Massachusetts, whether it be brought about in five minutes or five days or five months—is that the new government shall be the sole authority throughout the region over which it undertakes to govern, and that there is no contention and no disputed authority. It is not necessary to go that far. But when those conditions exist to that extent, then according to all international canons of law a recognition is in order at the option of the recognizing government. In the case of France I say there was no special necessity for haste, but these conditions existed, as we understood, and we recognized it.

It was the same as to Spain, and the same as to Brazil in a general way. But in the case of Panama it was not only true that the Republic of Panama was the only authority there of a governmental nature, that that authority was supreme throughout her borders, but it was also true that there was not even a policeman representing Colombia within the Department of Panama. They had a little army there when the trouble commenced—400 men, with some generals and colonels—and they were all quietly picked up, without the shedding of one drop of blood, and put on a transport and sent back to their own home. That completed the revolution.

But, Mr. President, there was a necessity in the case of Panama which required prompt action on our part, as there was no necessity in the other cases to which I have referred. These conditions existing, we would have been without excuse if we had halted in recognition. The necessities to which I have referred are these: Under the treaty of 1846 we had a duty at that time incumbent upon us, as it has been ever since the ratification of that treaty down to the present moment, to preserve that transit free from interruption.

War being threatened, a condition of things being threatened that promised an interruption, it was the duty of this Government to be pre-

pared to prevent it; and instead of criticising President Roosevelt for the action he took, he ought to receive and he will receive from the American people their unqualified approbation for that which he did in this respect, because that which he did was but to redeem the promises and obligations of our Government, just as other Administrations have done the same thing over and over again.

We do not have to wait until there is actual war. We do not have to wait until there is a hostile force landed and engagements actually commence and blood is being actually shed. It is much better, Mr. President, foreseeing the situation of which all have common knowledge, to take steps to prevent these conditions that would have followed but for our intervention.

Mr. President, other nations have recognized the Republic of Panama. I do not remember how long they delayed. It was quite natural, perhaps, as the Senator from Massachusetts suggested, as I understood him, that France should promptly recognize, but I do not know of any reason why Germany should recognize or Russia should recognize or China should recognize the Republic of Panama, except only the reason that according to international law, as I have stated it, the conditions existed that warranted and justified recognition, and they recognized at their option.

Mr. President, no Senator on this side, I am sure, has the slightest objection to all possible information being given with respect to this whole transaction; no Senator on this side has the slightest objection to all the light being had on this transaction that can be shed on it, but there is a time and there is a place for Senators to discuss propositions of this character. Here in this open session is not the time nor the place. I have undertaken to say enough only in answer to the Senator from Massachusetts to show that the President in this matter did not act hastily; that he did not act without precedent or without the warrant and authority of international law, and that he did not act contrary to, but strictly in conformity with, his official obligation, charged as he is, as the head of this nation, with the faithful execution of all our treaty obligations.

I have no hesitancy in saying, Mr. President, that I have the profound conviction that when this matter is thoroughly understood even our Democratic friends will hesitate to criticise him. Certainly they will hesitate, at any rate, when they make their nonpartisan speeches, of which we have heard so much, and then give their nonpartisan votes.

But, Mr. President, as I have already intimated, I do not want to discuss the question at any greater length than I have. I do not think it proper to do so. I have undertaken to say just enough to express the view I entertain with respect to it and the view which I believe my brother Senators entertain and the view which I believe the American people have and will approve with respect to it, and with that, for the present, I am content.

It seems to me now, as it did then, that neither our Government nor President Roosevelt did anything in that whole matter that was the subject of legitimate criticism. On the

contrary, I feel now, in the light of subsequent events, as I did then, that President Roosevelt's action was entitled to the highest commendation as not only wise and patriotic, but as absolutely necessary to the protection and advancement of American interests in connection with an Isthmian Canal.

As I dictate these lines a rather amusing incident comes to mind. The claim Colombia is now making is not now made for the first time. She commenced making the claim immediately after we recognized the independence of Panama, and entered into a treaty with her under which she gave us a canal zone, upon which we commenced the construction of the canal.

At the beginning she claimed only ten millions of dollars, but that she claimed very vigorously and very industriously. The Colombian Minister then in Washington in some way had hope that the Congress expiring March 4, 1904, would make an appropriation of that amount for her benefit. It seems that in connection therewith he had a number of interviews with Mr. Hay as Secretary of State.

The day after Congress adjourned I had occasion to call upon President Roosevelt. He told me, with much appreciation of the humor involved, that he had heard from Secretary Hay that the Colombian Minister had visited the Department of State; that he was greatly disappointed because the Congress had not made the appropriation he desired and expected. He wanted Mr. Hay to advise him what he should do, and Mr. Hay, according to his report, told him to "be patient and trust in the Lord." Mr. Hay added that he left with a despondent look on his face that "plainly enough indicated that in his opinion 'trust in the Lord' was a poor substitute for an appropriation."

CHAPTER XXXIX.

CAMPAIGN OF 1904

ELECTION OF PRESIDENT ROOSEVELT.

IN 1904 I was chosen by the State Republican Convention of Ohio to be for the sixth time in succession a delegate-at-large to the National Republican Convention held that year in Chicago.

In that convention, as in a number of the previous conventions, I served as the Ohio member of the Committee on Resolutions, and in that capacity assisted in the framing of our platform.

Long before the convention assembled it was evident that President Roosevelt would be nominated. In fact, there had been no reasonable doubt in the mind of any one, subsequent to his indorsement in 1903 by the Republican State Convention of Ohio.

A few days after the convention I took a short vacation with my family. We visited Yellowstone National Park. All of us enjoyed greatly the outing.

After my return I commenced active campaign work in Ohio, but was called upon to participate in the campaign in other states. In the course of the campaign I spoke in New York, Pennsylvania, several of the New England States and a number of the Western States.

One of the first of these speeches was made under the auspices of the Hamilton Club of Chicago on the 17th day of September, 1904, and one of the last speeches was made in Music Hall, Cincinnati, October 29, 1904.

My speech at Chicago was widely published in the Republican press of the country as one of the keynotes of the campaign. I had many beautiful letters of congratulation

on account of it. Among them the following from Mr. John Hay:

NEWBURY, N. H., September 20, 1904.

Dear Senator Foraker:—Only a word—to say what a magnificent speech that was with which you opened the campaign in Illinois, crowded and crammed with facts, energy and eloquence. That is the sort of thing that is worth while.

Yours faithfully,

JOHN HAY.

Words of commendation from him for such an effort were always highly appreciated by every one fortunate enough to receive them. The fact is, I trust, a sufficient excuse for my using here what he said. But much as I appreciated his letter about the Chicago speech, I appreciated still more a letter I received from him about the Cincinnati speech, of which the following is a copy:

DEPARTMENT OF STATE.
WASHINGTON.

December 7, 1904.

My Dear Senator Foraker:—I had a leisure minute or two yesterday, and once more read over your magnificent speech of the 29th of October. One gets a new light on such an address by reading it a month after it is delivered, and after the smoke has cleared away from the battlefield. Read even in this light, it is still an admirable piece of work, and, while congratulating you on it, I must thank you for your very kind reference to myself.

Yours faithfully,

JOHN HAY.

HON. J. B. FORAKER,
United States Senate.

For John Hay, Secretary of State and as busy a man as could be found connected with the Government, to read a political speech once and write a note about it was a high compliment. To have him read a speech twice and write about it, as he did in this letter, was indeed the very highest character of compliment. I appreciated it accordingly.

I not only insert the letter with pleasurable pride, but I also insert extracts from the speech because it shows the character of the campaign of that year, the arguments

made and the spirit that was abroad in the land. The speech was a free and easy talk adapted to an enthusiastic mass meeting assembled in the closing hours of a triumphant campaign when exhortation was more in order than argument.

Our candidate for Vice President, Senator Fairbanks, was present, and thousands had come to see and hear that distinguished statesman. I had spoken that afternoon at Xenia, Ohio, and was not expecting to do more than speak a few words of congratulation following the remarks of our candidate for Vice President.

The meeting was, however, so enthusiastic, the spirit was so splendid and the responses to what I said were so emphatic that it appeared impossible to find any place to stop.

I complimented Mr. Fairbanks on the good work he had done in the campaign, dwelt upon the prosperity the country was enjoying and then said:

And yet I find in the newspapers of this morning a speech made yesterday by Judge Parker at his home at Esopus, in which he says, speaking to a delegation of farmers—from Wall Street (laughter), that the farmers of this country have suffered on account of the tariff. Let me read his exact language:

"The farmers suffered even more, possibly, than the wage earner, by excessive tariff duties." Then he proceeds to tell those farmers how they are compelled to pay \$9.00 a ton more for steel rails than they are sold for abroad. (Laughter.)

But, my fellow citizens, let us stop and think for a moment of what he says about the farmers. Have the farmers of this country been suffering during the last seven years? (Cries of "No!") Only this afternoon in Xenia, Ohio, I spoke in an opera house filled with farmers, and from their general appearance they might have been mistaken for so many bank presidents. (Applause.) I did not see one of them who was not clad in becoming clothing, who did not look happy, who did not look prosperous, who did not seem to know that "The frost was on the pumpkin and the corn was in the shock." (Applause.) Senator Fairbanks well remembers how the Dingley law was framed, and if you never read it, I would be glad if you would read it, in view of this statement of Judge Parker. You will find that the framers of that Dingley law did not forget any interest or any industry in this broad land, least of all the farmer, who is protected by it as to every product he brings forth. There is a tariff on corn, and on wheat, and on everything else, from corn and wheat down to butter and eggs; and the result is that the farmers of this country were never so prosperous as they are today, because they not only have our tremendous home markets that have

been built up under the Dingley law, but they have those home markets all to themselves. No Canadian eggs, or Canadian butter, or rye, or oats, or barley, or wheat can come into this country until they walk up to the captain's office and settle with Uncle Sam. (Applause.) If the farmers who waited on Farmer Parker yesterday (laughter) could only travel about through Ohio and other States of this Union, as I have been doing during this campaign, they could not help finding out the fact that there is not an acre of farm land in all this whole country, from ocean to ocean, that is not worth today at least fifty per cent. more than it was when McKinley was elected. (Applause.) There never was a time in the history of this country when the farmer owed so few mortgages as he owes today. There never was a time when he had as much money as he has today with which to buy all the land that next adjoins him. (Applause.) And as it is with the farmer, so it is with every industry in this broad land. Why? Think of the figures that have been named; think of the aggregate of the balances of trade in favor of this country in the last seven years; amounting to the incomprehensible sum, for such it is, of three thousand, six hundred millions of dollars. No wonder we have prosperity.

Senator Fairbanks has alluded to the Panama Canal and President Roosevelt's recognition of the Panama Republic. Let me add just a word to what he has said.

Since 1846 we have been under treaty obligations to preserve peace and order on the Isthmus of Panama at the transit. This secession was calculated to precipitate war. Colombia commenced marshaling her army. She assembled four hundred men and eighty-seven colonels. (Laughter.) They commenced threatening all kinds of dire doings. Among other things, they were going to kill some Americans and destroy some American property, and they were going to fight the Panamans on the transit. It was in that emergency, to obey and discharge the obligations of our treaty, that President Roosevelt ordered from the Nashville the marines to be landed, and they landed—twenty-four of them. (Laughter.) That was enough, because they carried the American flag with them. (Applause.) They represented the power and the authority of this great Republic, the United States of America. Later thirty or forty more were landed, and they gave it out as the order of President Roosevelt that they were there not to make war on anybody, but only to protect American rights and property, and to preserve peace and law and order on that transit, and, therefore, if the Colombians wanted to fight, they were welcome to; that was none of our business, but they must find some other place than that particular spot to do their fighting. (Applause.) They were told that if they wanted to fight to go off in the woods. (Laughter.) That settled it, for if a South American can't fight within reach of the telegraph, so his bravery can be properly exploited, he does not want to fight at all (laughter); and so it was that we acted throughout, as well as in recognizing the Republic of Panama, in discharge of our treaty obligations. Our Demo-

cratic friends, in the debates in the Senate and House, sought in vain to find a weak spot in all the record that had been made. As a result of it all, we now have that canal.

When we get it constructed it will be an American canal, paid for with American money, controlled by the United States of America, but we will allow all the nations of the earth to use it for peaceful purposes, on such terms and on the payment of such tolls as we see fit to prescribe. (Applause.)

Speaking of the "Open Door" policy, I said:

You will remember that only two or three years ago Russia, France, Germany and England, having made lodgments and taken control of certain spheres of territory in China, according to common report, and that report was based on fact, seemed to contemplate the partitioning of China and the appropriation of it to themselves. That would have closed the door against us as to trade in the Orient. In that emergency John Hay (long applause)—I am glad to know from that demonstration that you properly appreciate him. (Applause.) He is one of the wisest, most patriotic and diplomatic of all the Secretaries of State who have ever held that great office (applause)—he took his pen in hand, at the crucial moment, and addressed these several Powers a circular note, telling them in effect of the tremendous prosperity we have here, of our necessity to look out for our share of these increased and additional markets and our desire to trade in them, and concluded by saying that if they undertook to close the door against us, we would regard it with extreme displeasure. (Applause.) That is all. A note like that sent to these great Powers ten years ago might have been answered in the course of six or eight weeks or months, but in all probability, when the answer came, it would have been evasive—but since George Dewey sailed into Manila harbor (applause) nobody treats the communications of the United States in that way. (Applause.) And so it was that by early mail there came back prompt and satisfactory answers from every one of them. The effect of them was: "Why, yes, certainly, to be sure; glad you let us know about it." (Laughter and applause.)

The last thing Russia did before Japan made her so busy she could not think of anything else except the business on hand, was to designate two ports of entry that should forever be open to American commerce. (Applause.)

Well, my fellow citizens, we had all that in view when we took from Spain a cession of the Philippines. We did not take them to make money. We had no thought of levying tribute upon them. We had no lust for power in the matter. We had no greed for land; no improper spirit, but only regard for the millions of this country, toiling in the shops and the factories of such cities as Cincinnati, and the millions who live on our farms. We felt that we owed it as a duty to the American people to preserve for them their fair share of these great growing markets of the world. (Applause.)

I then spoke at length of the Philippines and the work we had been doing there, saying, among other things:

But, my fellow citizens, it is not alone civil government and just treatment that have won the hearts of the Filipinos. We have been doing something else. We have been establishing schools there. There are now in the Philippines 2,000 little American school houses, with a little American flag flying over each one of them (applause), and a little American teacher inside of each one of them. (Applause.) Every one of those school houses is crowded from early morning until late evening by Filipino children who are hungering and thirsting for education, and particularly for knowledge about the United States. (Applause.)

I was talking with one of these teachers a few weeks ago, and was told that the only trouble they have with these little Filipino children is to get them to go home when school lets out. (Laughter and applause.)

Not only have we these day schools, but we have been compelled, in answer to the demands of the adults for education, to establish night schools. In Manila we have also established a great normal university, where we are teaching Filipinos, preparing and qualifying them to be teachers of their own native children. (Applause.)

The demand has been so increased that at almost every post where we have not been able to furnish teachers, the officer in charge has been detailing enlisted men to teach. My fellow citizens, instead of its being discreditable, it is one of the most creditable chapters that has been written in modern times by the United States. (Applause.)

My Democratic friend, don't you wish you had something to do with it? (Applause.)

It is necessary that we should have a minority party; it performs a good office. It puts us on inquiry; it makes us investigate; it keeps us humble—from getting proud; keeps us attentive to business; but you don't have to stay in the minority party forever. (Laughter.) Now is a good time to get out of it. You can't do Judge Parker any good anyhow. (Laughter and applause.) His case is already lost, and I advise you to get over into this Republican Party that does things and does grand things ever. (Applause.)

Suppose now that this country should go Democratic on the eighth day of November, and Judge Parker be elected and be put into power, committed as he is to an abandonment of the Philippines—(cries of "Soup houses!") Yes, there would be soup houses; but I am thinking of what would happen in the Philippines.

I suppose Judge Parker would appoint some "minister paramount" to officially communicate to our representative there the fact that he had been elected and inaugurated—some "minister paramount," I say, to go over and officially order the army to come home and the navy to sail away and back to the United States. He might get along pretty well with that, but what a spectacle there would be—what a trial of his nerve when he undertook to visit these school houses and give them the word. Imagine him going up to one of these school houses and knocking on the door. The teacher opens it and says: "What is it?" "Beg

pardon, madam, but I've come to tell you that Parker is elected." (Laughter and applause.) "Roosevelt has been defeated. The Republican Party has been turned out of power. The Democracy have come in. The policy of the United States is to be changed with respect to the Philippines, and I have come here to tell you of that." "What is it you want to do?" "I want you to dismiss school. Tell the children to go home; take their books with them; they need not come back; there will be no school here tomorrow." (Laughter.) "No school here next week or next year. Pull down the flag." (Cries of "Never!") "Pack up your duds and make haste to get into Manila and on to a transport, for fear the French, or the Germans, or the Russians, or somebody else will come in before we get away to take our place." (Applause.)

My fellow citizens, do you want to see such a proceeding as that? (Cries of "No! No!") You don't want to see it, and no man will ever be elected to power who advocates any such a result. (Applause.) It would not only be an act of poltroonery that would brand us before the nations of the earth as incapable, but it would destroy all our prestige, our influence, and all our power in the Orient to keep open the door to American merchantmen.

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I closed as follows:

I want to say, in conclusion, that the great objection I have to Democracy is that it never can find power to do anything. Democracy is predicated on the teachings of Thomas Jefferson, a great man, who rendered conspicuous service, whose name will live forever in the gratitude, as well as the history, of the American people; yet his teaching was to magnify the State and minimize the national power. In that earlier day it was disputed that the Federal Government had power to make internal improvements; it was said it could not build the national road through Pennsylvania and Ohio, and it did not until after a protracted debate.

And thus they denied our power to levy tariff duties for purposes of protection, and when we got into war with Spain they denied our power to despoil the enemy of his territory, unless, at the conclusion of the war, we intended to give it back to him, or make it a State of the Union.

The Republican Party, on the other hand, found its platform in the teachings of Alexander Hamilton, who taught that the Federal Government has not only all powers expressly delegated, but also all implied powers necessary to the execution of the expressed powers. (Applause.) That the power to make war carries with it the power to destroy the enemy, to sack his cities, destroy his ships, take away from him his territory—just as we took Cuba, Porto Rico, the Philippines, and just as we would have taken the whole of Spain herself in three months more. (Applause.)

In other words, the Democratic Party had been an incapable and unsatisfactory agent, because it is founded on the basic idea of "Can't;" "You can't do it;" "No power to do it;" "It is not according to the Constitution."

The Republican Party has been doing things, because it believes George Washington, Benjamin Franklin, and Alexander Hamilton, and all our fathers, when they made the Constitution, intended to bring into the family of nations a sister not inferior in sovereign power, but one equal in sovereign power to the greatest of all the nations; and they foresaw that the time would come when this American Republic would stand, not at the foot, but at the head of the nations, as we do today. (Applause.) We have simply proceeded upon this idea. The results are known of all men. (Prolonged applause.)

Election day came, and Roosevelt and Fairbanks were elected by overwhelming popular majorities and by a majority of 196 votes in the Electoral College.

There had grown up a sort of custom according to which a Vice President succeeding to the Presidency on account of the death of a President was spoken of as "His Accidency." There were many among the critics of President Roosevelt who had prior to his election applied that title to him. A few days after the election I returned to Washington and called upon President Roosevelt to pay my respects. When I was ushered into his office he walked forward briskly to shake hands and welcome me. In doing so he announced with manifest satisfaction, "You are shaking hands with His Excellency, not His Accidency."

I congratulated him upon his decisive victory. He expressed great satisfaction that his majority was so pronounced, and remarked in that connection that he accounted himself fortunate in having had Judge Parker for his opponent; not because of any lack of appreciation for Judge Parker's ability and character, but because his views were such that a large element in the Democratic Party could not very well become his supporters.

In the conversation that followed he thanked me profusely for the work I had done in the campaign, and spoke of his forthcoming administration as one with respect to which he would feel at liberty to have his own policies, rather than under obligation to continue the policies of McKinley, which he had until that time been pursuing.

As I look back to that conversation I think I might well have taken some alarm as to the future. But I did not. ✓

He spoke of his pleasant relations with different Senators, mentioning particularly Senator O. H. Platt of Connecticut. He spoke of him with words of highest praise and said he hoped during the next four years to have these same pleasant relations continue with all of us, so that at the end we might lay down our labors with the same respect and feeling of warm friendship for each other that then prevailed.

He was a very happy man. He was full of the spirit of triumph and full of hope and courage with respect to the future.

He fully realized that a great opportunity had come to him for usefulness to both his party and his country, and was determined to embrace and improve that opportunity to the utmost.

I had the same opinion and entertained the most optimistic expectations as to his forthcoming administration. He went out of office saying, according to a published interview, that he had "had a bully good time," and expressing the thought that he "had made good."

I am sure he did have a "bully good time," and that as to most matters he "made good," but in some particulars there is at least room for argument. At any rate I was compelled to disagree with him as to some important questions, of which I shall speak in the next chapter; not, however, either offensively or defensively, but only because not to do so would be to leave these notes incomplete.

While testifying (April 23, 1915) as a witness in his own behalf in the Barnes libel suit, he said, speaking of me, according to newspaper reports, that I had bitterly opposed him, but "nevertheless he always had for me a great liking." This was a kind expression which I not only appreciate but fully reciprocate, and never more so than now when "watchful waiting," truckling to Colombia and the Panama Canal surrender combine to recall in refreshing contrast his stalwart Americanism, his virile character, his fearless courage and his rugged and aggressive way of doing things that ought to be done.

CHAPTER XL.

DIFFERENCES WITH PRESIDENT ROOSEVELT.

PRIOR to President Roosevelt's election in 1904, he and I had never had any serious differences of opinion about public affairs. Later I differed with him in a broad way as to the Initiative, the Referendum, the Recall and all the other Socialistic ideas, as I regarded them, that had been advocated by W. J. Bryan and other Democrats, and by Socialistic leaders generally, to the extent he adopted and advocated them.

It is not my purpose to speak in this connection of that difference, but rather of three matters that presented themselves in concrete form, about which my Senatorial duties required me to differ with him positively and earnestly. They were Joint Statehood for New Mexico and Arizona, the conferring of the rate making power on the Interstate Commerce Commission and the Brownsville shooting affray, on account of which he discharged a whole battalion of the 25th Infantry, colored troops, without sufficient evidence as I thought then and still think.

In the Senate I discussed at length and repeatedly all these subjects generally and in detail. It never occurred to me in connection with the question of Joint Statehood for New Mexico and Arizona, or the discussion of the rate bill, that I was either saying or doing anything that would give him offense, or cause him to have any kind of ill feeling. I assumed that he was strong enough and broad-minded enough and had respect enough for my duties as a Senator to accord me the privilege of differing from him and of maintaining and advocating with respect to such differences such views as my convictions of duty might lead me to entertain.

I am sure if there had been only these two differences there would not have been any trouble—not more at least than a mere temporary disappointment.

As to the Brownsville matter it was different, but I shall deal with that in another chapter.

So far as the Statehood matter is concerned that has already been, perhaps, sufficiently dealt with. If I add anything at all to what has been said, let it be that the President first officially announced his position in favor of Joint Statehood in his Message sent to Congress December 5, 1905. On this subject he said:

I recommend that Indian Territory and Oklahoma be admitted as one State and that New Mexico and Arizona be admitted as one State. There is no obligation upon us to treat territorial subdivisions, which are matters of convenience only, as binding us on the question of admission to statehood. Nothing has taken up more time in the Congress during the past few years than the question as to the statehood to be granted to the four Territories above mentioned, and after careful consideration of all that has been developed in the discussions of the question, I recommend that they be immediately admitted as two States. There is no justification for further delay; and the advisability of making the four Territories into two States has been clearly established.

With special reference to his claim that territorial subdivisions involve no obligation on the part of the Government to adhere to them in making States, I pointed out in the course of the debate on the subject that when the territory of Arizona was created in 1863 during the administration of Mr. Lincoln, Congress provided in the act

That said government shall be maintained and continued until such time as the people residing in said territory shall apply for and obtain admission as a State.

This I contended was in the nature of a pledge given by the Government on which the people of Arizona had a right to rely in becoming citizens of that territory and in taxing themselves for the erection of public buildings and the establishment of schools and colleges.

In addition to the fact that I entertained the views I expressed in debate, on account of which it was impossible for me to accept and follow the President's recommendation for Joint Statehood, the record shows that as early as in 1903 I had, in support of the bill then under consideration

providing for separate Statehood, taken the same position and made the same character of arguments to which I adhered until the end. In other words, the position I took and contended for throughout was taken and contended for long before the President expressed any opinion on the subject.

So far as the Joint Statehood matter was concerned, it was not, therefore, a difference of my seeking, as some one charged, for I was not aware we had different opinions on the subject until his Message of December, 1905.

So far as the giving of the rate making power to the Interstate Commerce Commission was concerned, a much broader and more important question was involved.

The President first advocated this proposition in his Message to Congress of December 5, 1904. *58th Cong, 2nd Session*

I was a member of the Interstate Commerce Committee of the Senate. For several years that committee had constantly under consideration measures of various kinds for the further and more efficient regulation of the railroads, most of them brought forward at the instance of commercial bodies and labor organizations, but quite aside from my membership of that committee I was active in promoting legislation of that character.

As early as June 24, 1902, I introduced Senate Bill No. 3560, known as the Railroad Safety Appliance Bill, which became a law March 2, 1903. I introduced this measure at the request of the organized employees of the railroads and championed it in the committee and on the floor of the Senate, where I had charge of the measure when it was put on its passage.

I took an active and very prominent part both in the committee and in the Senate in the work of bringing about the enactment of what was known as the Elkins law, passed February 19, 1903.

The Interstate Commerce Committee referred this measure to a sub-committee, composed of Mr. Elkins, Chairman, Senator Clapp and myself. We recast the measure and put

it into the form in which it was reported favorably by the committee, and passed by the Senate. It was called the Elkins law, because it was reported by Mr. Elkins, Chairman of the committee; but no one had more to do with the framing of the law than I had.

It was a measure designed primarily to break up secret rebates and discriminations of every kind and character practiced by the railroads. It was advocated by the shipping interests of the whole country and opposed generally by the railroads.

The Interstate Commerce Commission, in its seventeenth annual report, made December, 1903, set forth the character, scope, purpose and beneficial operation of this law, as follows:

Its provisions are mainly designed to prevent or more effectually reach those infractions of law, like the payment of rebates and kindred practices, which are classed as misdemeanors.

In the first place, the recent amendment makes the railway corporation itself liable to prosecution in all cases where its officers and agents are liable under the former law. Such officers and agents continue to be liable as heretofore, but this liability is now extended to the corporation which they represent. This change in the law corrects a defect which has always been a source of embarrassment to the Commission, as has been explained in previous reports, because it gave immunity to the principal and beneficiary of a guilty transaction. As a practical matter, it is believed that much benefit will result from the fact that proceedings can now be taken against the corporation.

The amended law has abolished the penalty of imprisonment, and the only punishment now provided is the imposition of fines. As the corporation can not be imprisoned or otherwise punished for misdemeanors than by money penalties, it was deemed expedient that no greater punishment be visited upon the offending officer or agent. The various arguments in favor of this change have been stated in former reports and need not here be repeated. Whether the good results claimed by its advocates will be realized is by no means certain, but the present plan should doubtless be continued until its utility is further tested.

Without further reference to the changes effected by this amendatory legislation the Commission feels warranted in saying that its beneficial bearing became evident from the time of its passage. It has proved a wise and salutary enactment. It has corrected serious defects in the original law and greatly aided the attainment of some of the purposes for which that law was enacted. No one familiar with railway conditions can expect that rate cutting and other secret devices will immediately and wholly disappear, but there is basis for a confident

belief that such offenses are no longer characteristic of railway operations. That they have greatly diminished is beyond doubt, and their recurrence to the extent formerly known is altogether unlikely. Indeed, it is believed that never before in the railroad history of this country have tariff rates been so well or so generally observed as they are at the present time.

In its present form the law appears to be about all that can be provided against rate cutting in the way of prohibitive and punitive legislation. Unless further experience discloses defects not now perceived, we do not anticipate the need of further amendments of the same character and designed to accomplish the same purpose.

No measure ever yet enacted has proven more effective than this law in the breaking up of the abuses and evil practices of which the shippers were at that time making just complaint.

I mention these measures as I might mention a half dozen others, if there were occasion for me to do so, only to show that I was never opposed to the proposition that there should be a proper, general governmental supervision and regulation of the interstate railroads of the country.

On the contrary, I was one of the foremost advocates of that policy and supported it as it found expression in the enactments of Congress down to the point where it was proposed, as a part of this policy, to confer on the Interstate Commerce Commission the power to make rates.

Our committee had taken a great deal of testimony of shippers and railroad officials with respect to the practices about which there was complaint, and in this connection a great many witnesses had testified about the rates for the carrying of passengers and freights charged by the railroads of the United States, and almost without exception everybody, whether a shipper or a railroad man, had testified that, so far as the rates themselves were concerned, they were not excessive, except possibly in some few instances; that, generally speaking, they were entirely reasonable; that in fact they were lower in this country than in any other country in the world; much lower than in England, or France, or Germany, or any great country with which it was fair to compare the railroad conditions of the United States.

The sole complaint with respect to rates was that by secret rebates given to favored shippers abuses were perpetrated that should be broken up, and that by discriminating in favor of one point as against others the legitimate course of commerce was interfered with to the prejudice of the points not in favor.

The Elkins law had been in force and had been upheld by the Supreme Court of the United States as constitutional as long as two or three years before the proposition was seriously advanced to confer the rate making power on the Commission; and it was the testimony of shippers, as well as of railroad men, practically without exception, that the Elkins law had substantially broken up all the evil practices complained of which it undertook to prohibit; that its proper enforcement would accomplish all any law could effect.

Nevertheless, it was proposed not only to confer the rate making power on the Commission, but it was further proposed that the rates so to be made by the Commission should have no flexibility—even the slightest, under any circumstances whatever, but be absolute, without any power whatever on the part of the railroad, or any other authority or agency to alter, modify or change in any way, any rate, to make it either more or less than the Commission prescribed, and these extraordinary powers were to be exercised without any provision in the law for a judicial review of any action the Commission might take.

It seemed to me this was unwise legislation. To begin with, because unconstitutional, first, on the ground that it was a constitutional right guaranteed to every citizen of the United States that he should somewhere, sometime, somehow have a day in court, and that it was beyond the power of the Congress to deny it to him; and, second, because, as I thought, according to the decisions prior to that time made by the Supreme Court of the United States it was a plain delegation to the Interstate Commerce Commission of the legislative power to make rates.

Again, the testimony showed that the making of rates was necessarily the work of experts, who did not act arbitrarily, but who in a scientific way ascertained and declared what competition required; that it would be a difficult, if

not impossible task, for a Commission of five or seven men, as the case might be, sitting in Washington and acting arbitrarily, or following the suggestions of competition, to prescribe the proper rates to be charged for all the railroads between all the different point in the whole United States, millions of them in the aggregate.

In the third place, taking the rate making power away from the owners, and giving it to this official body, would deprive the railroads of the control of their revenues, and in consequence destroy their credit and their ability to raise money and go forward, as they were then doing, to make needed extensions and improvements in tracts, equipment, tunnels, bridges, overhead crossings and everything else pertaining to the construction and successful operation of a satisfactory and adequate railroad system for the United States.

September 23, 1905, in a speech at Bellefontaine, I said:

During the last eight years the freight business of the country has doubled in volume. . . . If this increase of business continues for eight years more at the same rate of progression, and the indications are that it will, it will be impossible for the railroads to handle it, unless in the meantime, in addition to the general improvements mentioned, they double and quadruple their main lines.*

I then pointed out that during the preceding eight years the railroads had spent, in providing additional tracks and making necessary improvements, \$1,500,000,000, and that to take away from them the rate-making power would be to destroy their credit, deprive them of ability to make such expenditures, and thus stop necessary development, in consequence of which we would soon come to the point where our railroad system would be utterly inadequate to handle the freight business of the country.

All that has come to pass. Instead of doubling or quadrupling their main lines, the railroads have barely held their own in that respect.

* Since the first edition of this work was published. Mr. Howard Elliott, President of the New York, New Haven & Hartford Railroad Company, stated in an address delivered before the Chamber of Commerce of the United States at Washington, February 8, 1916, that

"Whatever the reasons for the present Malady of the Railways, two facts stand out prominently in the history of the railways of the United States for the year 1915. One is that less mileage was built in that year than in any year since 1864. There have been only three years since 1848 when there was a smaller mileage of new railway constructed than in 1915. The other fact has to do with the amount of railway mileage in the hands of receivers in 1915. With only one exception, 1893, was the mileage that entered into the hands of receivers larger than last year; and 1893 was a panic year.

It would be years before they could recover the ground that has been lost if they were to be at once unfettered; if they continue deprived, as they are, of the control of their revenues, and restricted by the Interstate Commerce Commission to rates on which they can barely live, they never can recover, and this will be an even greater calamity to the country than to the railroads.

It also seemed to me unwise to compel our railroads to publish their rates as to international commerce, and thus make them known to all the world outside of the United States, as well as inside, because in competition for foreign trade with other countries, where rates might be changed by the flash of a cable, our manufacturers would be at a disadvantage as compared with theirs.

A party in Hongkong or Nagasaki, desiring to order machinery or other heavy freight, would patronize the manufacturers of the United States, or the manufacturers of some other competing country, accordingly as the one or the other would name the lowest cost price, including freight to point of delivery, and hence the cost of freight carriage in such cases being an important part of the cost of production and delivery, and our freight cost being absolutely fixed and known to everybody, it would be impossible for us to compete with the manufacturers of a country whose freight rates were not known and which would allow a cutting of rates for the purpose of taking the business.

In the next place, to fix rates and allow no deviation therefrom, either up or down, put an end at once to all competition and inaugurated a policy which was in direct conflict with the teachings of political economy, and also with the policy established by the provisions of laws already enacted as to every other kind of business; instead of protecting and encouraging competition it stifled and prohibited it.

If two merchants or manufacturers competing with each other come to an understanding as to the price they will charge for their goods or products they have, according to the anti-trust laws of the country, restrained competition and committed a felony, and on conviction thereof must be sent to the penitentiary or be heavily fined. But if two competing railroads should undertake to secure business from each other by cheapening the rates the officials responsible, according to the legislation proposed, should be held to have committed thereby a felony for which they would be imprisoned and punished.

In other words, thenceforth with the railroads competition was to be a crime, while with every other kind of business the crime was in the restriction of competition.

I believed in competition and that it should be protected and preserved, as to the railroads as well as every other kind of business, and that, instead of destroying and prohibiting it, we should supervise and regulate it.

Competition so governed and regulated was, I thought, a better rate-maker than any the law could provide—far better than any Commission we might create.

Moreover, it was claimed, and on a number of occasions I pointed it out with detail and certainty, that if the government went into the business of rate-making it could not act intelligently without practically taking charge of the entire railroad business of the country, and, in addition to that general responsibility it must thus assume, it would be necessary for it to specifically supervise that business in all its details; in that behalf requiring valuations and revaluations of the property, theoretically necessary but practically of unimportant value; the inspection and conduct of methods employed, salaries of officials and wages of employees that might be paid, the books that should be kept, and the systems of accounting that should be used, with multitudinous reports of every kind and variety to be from time to time called for, making altogether a great burden to the government and an expensive, harassing annoyance to the railroads, throughout which the government would assume none of the risks of owner, and by which no corresponding benefits would be conferred on the railroads or anybody else.

I further pointed out that such a policy would in the nature of things feed on itself and “spread like a conflagration from the railroads which were to be the starting point, until in some form or other it comprehended and applied to every other kind of business, for such were the teachings and plans of Socialism.”

In addition to all else I regarded the proposition as Democratic in both origin and character; and worse than Democratic, because of the Socialistic brand it bore; and that, whether so intended or not, it was a first step in the direction of government ownership of which W. J. Bryan

and all the great Socialistic leaders were conspicuous advocates; that our indorsement of such ideas would give them a respectability they did not have in the minds of thousands of Democrats and in the minds of millions of Republicans, with the consequent effect of uniting the Democratic Party and dividing our own.

Precisely this result was quickly developed. The proposed legislation was embodied in what was known as the Hepburn Railroad Rate Bill.

When introduced in the House it was openly proclaimed that it was an administration measure, *which was to be passed without amendment, just as it was introduced.*

Ordinarily this would be sufficient at that time to secure for any important bill united Republican support, and to excite against it united Democratic opposition; but, instead, the Democrats at once recognized the bill as an expression of the doctrines they had been advocating, and from the beginning became a unit in its support, while Republicans were divided, but were brought almost unanimously to its support by a vigorous brandishing of the "Big Stick."

The bill was passed in the House without amendment by a vote of 346 yeas to 7 nays, *every Democrat voting for it.* The seven nays were all Republicans.

When the bill reached the Senate it was referred to the Senate Committee on Interstate Commerce, of which I was a member. I tried in vain, as others did, to amend the bill in the committee. A majority of the members were, as the majority of the House, in favor of carrying out to the letter the administration program, and would not, therefore, listen favorably to anything.

Notwithstanding this situation, I offered an amendment, or rather a substitute in the nature of an amendment to the Elkins law,—the character of which is sufficiently shown by the following explanatory statement, which I submitted to the committee in connection therewith, and which I incorporate here as an expression of the views I entertained and at the same time as a refutation of the oft-repeated charge that I was opposed to any kind of governmental supervision and regulation.

I submit that subsequent events show that what I proposed would have been far better than what we did. This was made clear at the time, but just then people who knew least about business had more to say and more influence than anybody else about how it should be managed; and, inasmuch as they were generally the most radical and most revolutionary in what they proposed, they were, for the sake of harmony and to "avoid a break with the President," allowed to prevail; even by the help of those who were sane enough to know better, as was the case with a majority of the Republican Senators who voted for the Hepburn Bill.

My statement was as follows:

The results desired by the President should be accomplished, but if they can be secured without conferring the rate-making power on the Interstate Commerce Commission or any other governmental agency, a number of very troublesome legal questions will be avoided, such as the Constitutional prohibition against giving preference to the ports of one State over those of another, the right to delegate legislative power, and all questions as to the power of the court to review the legislative act of making rates except in cases that are confiscatory, etc.

Notwithstanding the opinion of the Attorney-General, there is much difference of opinion among good lawyers as to how the court would decide these questions if we would give rise to them by going into the business of rate-making. All our legislation, if it involved these questions, might be overthrown in the courts. Without stopping to discuss them, it is enough to say that they are sufficiently serious to make it desirable to avoid them if we can accomplish the ends aimed at without encountering them.

The bill I have presented to the committee avoids them and at the same time gives, I think, a more prompt, more economical and more efficient remedy than can be secured through an exercise by the government of the rate-making power.

To make this plain, it should be recalled that there are three classes of abuses complained of.

They are excessive rates, rebates, and discriminations.

As the President, in effect, well said to the trainmen who waited on him a few days ago, there is but little complaint that rates, in and of themselves, are too high, and he did not anticipate that rates would be reduced, if the rate-making power should be conferred on the Interstate Commerce Commission or some other tribunal, to such an extent as to interfere with the wages of the employees.

There are, however, no doubt, some cases of excessive rates. At least, it would be strange if there were not, and a remedy against them should be provided.

As to rebates, they are largely, if not altogether, discontinued since the Elkins Law of 1903; and, if not, that law is regarded by all who have spoken on the subject as sufficient, if properly enforced, to break up the

practice. At any rate, there is no real need for further legislation on that subject.

The great evil to be reached and dealt with is discrimination.

This takes the form of discrimination between both localities and individuals. It is practiced under numerous guises and devices, such as terminal charges, elevator charges, refrigerator charges, private car line charges, classification, false weights, refusal to supply cars equally to shippers, and in numerous other ways.

The Elkins Law of 1903 was directly aimed at this class of abuses. It was made broad and, as we thought at the time, efficacious. The Supreme Court has upheld it, and wherever it has been invoked it has been found a quick and complete remedy. It did not provide a remedy, however, against excessive rates and was not as specific and comprehensive in some respects as experience has shown it should be.

The basis of the most important feature of the bill I have presented is the third section of the Elkins Act. I have sought to amend it so as to make it applicable not only to every form of discrimination that can arise, but also to excessive rates as well as rebates, and I have sought to make the law available to the humblest shipper in the land and to make it immediately responsive whenever he may see fit to invoke it.

It will provide, if amended as I propose, that whenever a shipper may think he is charged an excessive rate, or whenever rebates are complained of, or when any form of discrimination is charged, and a complaint—no matter how informal—filed with the Interstate Commerce Commission, it shall be the duty of that Commission to immediately investigate such complaint and, if it reach the conclusion that there is reasonable ground for it, and the railroad will not, upon notice from the Commission, desist from charging the excessive rate or giving the rebates or practicing the discrimination, the Commission shall thereupon, instead of proceeding to have a formal trial, as heretofore—continuing through months and even years—forthwith certify the complaint and the grounds of it, with a brief statement of the testimony to support the complaint, to the Attorney-General, who shall thereupon refer the same to the proper United States District Attorney, who shall at once file a petition in the Circuit Court of the United States having jurisdiction, which court shall forthwith make parties of all interested and proceed at once to hear the complaint, and upon such hearing enjoin—if it be a case of excessive charge—all that part of such rate that may be in excess of the lawful rate, which is the just and reasonable rate prescribed by statute, or enjoin the giving of the rebate or the further practice of the discrimination complained of, accordingly as it may be the one or the other.

The railroad shall have the right to appeal from this decision to the Supreme Court of the United States, but such appeal shall not suspend or supersede the judgment of the court unless the Circuit Court trying the case, or the Supreme Court of the United States, shall, for good cause, so order.

The whole proceeding shall be in the name of the United States and at the expense of the United States, and without any expense whatever to the shipper.

The reason for this is in the fact that these complaints involve more than the rights of the individual shipper or the particular community

complaining. No one rate can be singled out and dealt with by itself separately. Any change of an important rate may affect numerous localities, thousands of shippers and thousands of rates. The proceedings should, therefore, be on behalf of the public and at the expense of the public, except only that where the railroad is found to have been in fault there shall be judgment against it for costs as well as for relief.

In other words, the proposition of the bill is that, ~~upon complaint~~ and the showing of probable cause, the case shall be heard on its merits, in the first instance, in the court, where full relief can be granted.

This is not a delay to the shipper, because it will take no longer, stating it conservatively, to try the case before the court in the first instance than it would to try it before the Interstate Commerce Commission; and the probabilities are that any judge of the Circuit Court of the United States, accustomed to hearing witnesses, applying the law and disposing of litigated questions, sitting in equity, would try the case in much less time than the Interstate Commerce Commission or any other similar body would require.

The propriety of going, in the first instance, to the court, where a remedy can be administered, is manifest when it is remembered that every such case must, if the parties to it are so disposed, go to the court anyhow before it is ended, for it is the Constitutional right of every one to have his day in court, and that right can not be taken away by Congress, even if there were a disposition to do so.

The greatest work of the Interstate Commerce Commission has been in the exercise of its powers of conciliation. More than three-fourths of the cases brought before it have been, through its intervention, amicably and satisfactorily adjusted. It will retain this power of conciliation and must exercise it before instituting any legal proceedings.

The mere fact that the Commission is invested with power to sue in the name of the government and without expense of any kind to the shipper and to command a summary proceeding—which means that the case shall be heard and decided not in one or two or three or four years after it has been instituted, but in a comparatively brief time—will induce railroads to strain a point to come to an agreement with shippers, that they may avoid such character of litigation. They will realize that where the United States Government, in the interest of whole communities, proceeds against them, it will be useless to go to the courts unless they have just grounds of defense.

There are other features of the bill.

The first section, for instance, provides for the appointment of expert examiners who, under the direction of the Interstate Commerce Commission, can make an examination at any time of all books, documents, and papers of any railroad that relate to interstate transportation of commerce. This will enable the Commission to ascertain facts and secure evidence.

Another provision of the bill is designed to prohibit and break up the giving of passes. This provision needs no comment.

Another is simply declaratory of the common law rule as to reasonable and unreasonable agreements with respect to restraints of trade; a provision that is probably unnecessary, in view of the latest utterances of the Supreme Court of the United States on that subject, but which will remove all doubt as to what is legal in that respect and be found

helpful when it comes to the prevention of discriminations between localities made by independent roads.

Another provision prohibits the carrying of freight that is to be exported or freight that has been imported on through rates, less as to the rail portion of the charge than is exacted for the carrying of similar domestic commerce between the same points, unless the carriage be in ships of American registry.

The amount of freight carried on these lower through rates is constantly increasing, and there is a constantly growing complaint from manufacturers on this account.

Taking, for illustration, a complaint sent me by the Chamber of Commerce of Zanesville, Ohio—one of many such: It appears that products originating in Germany that are sold in this country in competition with similar articles produced in Zanesville are shipped from originating points in Germany to the ocean and across it to New York, and from there through Zanesville and beyond to Louisville, St. Louis, Chicago, and other cities at a less aggregate rate than Zanesville producers are required to pay to ship their products from Zanesville to Louisville, St. Louis, Chicago, etc.

Numerous similar cases were testified to before the Interstate Commerce Committee.

The purpose of these lower through rates on importations is largely to nullify the tariff duties imposed on such importations and thus defeat the protection intended for our manufacturers. The practice of giving such through rates has grown out of trade competition and necessities, and, it is claimed, that it would be inadvisable on many accounts to prohibit it.

But there is no just reason why, as an offset to its disadvantages we should not have compensation in the up-building, to such an extent as it may contribute thereto, of an American merchant marine.

What is said as to imports being brought in on lower through rates is equally true as to exports, except only that the volume of exports sent out of the country on these lower through rates is perhaps much greater than the volume of imports. It would be even more inadvisable to interfere with these lower through rates as to exports, since, while they have nothing to do with the tariff one way or the other, they greatly facilitate the marketing of our agricultural and manufactured products. But there is no sufficient reason of which I am aware why these exports and imports, amounting in the aggregate to millions of tons, should not be turned into American bottoms. The only trouble with our merchant marine has been its inability to get business. Without some kind of governmental help it will continue to languish. Subsidies are unpopular and are not likely to be granted. The old policy of discriminating duties, under which our merchant marine flourished during the early days of the Republic, meets with determined opposition every time it is proposed that we should return to it, not only on account of the reciprocal treaties with respect to shipping that we have with other countries, but also because of the fear many seem to have of retaliation.

The provision of this bill avoids all these objections to these respective policies and provides a way that is self-operating and that can not cost the government or anybody else anything, except only the railroads; and to such extent as it may cost them anything the merchant marine will get the benefit of it. If this provision be enacted into law the result

will be not an abandonment of through rates but a demand for American ships, which will be speedily built and put in commission as soon as it is seen that business is certain; and this will mean American ships not only for New York and other principal ports that may already have American lines, but also for every port of the country where there may be business for them.

This provision will not be in conflict with any of our reciprocal treaties, and it is not without precedent, for practically the same kind of measures have been resorted to by both Russia and Germany and probably also by other countries.

I subsequently offered my substitute in the Senate, and spoke repeatedly in its support.

My principal speech in the Senate was made February 28, 1906. In that speech I stated and argued all the objections to the Hepburn Rate Bill I have mentioned, and still others I have not mentioned here, and in connection therewith I advocated my substitute on the grounds set forth in the explanatory statement above given.

This speech was the most elaborate made by me on the subject. I undertook to discuss fully every phase of the subject, and did so. I was prompted to speak at such length and with such thoroughness by the fact that the Ohio Legislature then in session had, a few days before (February 23d), passed a joint resolution approving the President's demand for the proposed legislation and calling upon the Ohio Senators and Representatives in Congress to support the same. My speech was my first answer to these resolutions.

Later, March 30th, I sent to the General Assembly a formal answer. The resolutions and this formal answer were as follows:

WASHINGTON, D. C., March 30, 1906.

THE GENERAL ASSEMBLY OF OHIO.

Gentlemen:—I have received by due course of mail your House Joint Resolution No. 8, passed February 23, 1906, of which the following is a copy:

(House Joint Resolution No. 8.)

JOINT RESOLUTION
RELATIVE TO RAILROAD RATES.

Be it Resolved by the General Assembly of Ohio:

SECTION 1. That the members of the General Assembly of Ohio believe that President Roosevelt was right when he recommended to Congress that a law be passed "conferring upon some competent administrative body the power to decide upon the case being brought before it, whether a given rate prescribed by a railroad is reasonable

and just, and if it is found unreasonable and unjust, then after full investigation of the complaint to prescribe the limit of rate beyond which it shall not be lawful to go, the maximum reasonable rate, as it is commonly called, this decision to go into effect within a reasonable time, and to obtain from thence onward, subject to review by the courts."

SECTION 2. That we commend the wisdom of such legislation by the Congress of the United States, and request the Senators and Members of the House of Representatives from Ohio, in Congress, to vote for the passage of a law containing such provisions.

SECTION 3. That copies of this resolution be sent to the Senators and Representatives in Ohio, in Congress, by the Secretary of State.

C. A. THOMPSON,

Speaker of the House of Representatives.

JAMES M. WILLIAMS,

President pro tem. of the Senate.

Adopted February 23, 1906.

I have delayed answering until now, because I observed that you had under consideration a bill creating a Railroad Commission and empowering it to fix railway rates and prescribe railway regulations for Ohio.

It occurred to me that in the consideration of that measure you would find it necessary to consider and act upon some of the questions that have been discussed in the two Houses of Congress and that it might be easier, after such action, to make answer to your request.

I now learn that the bill, with some amendments, has passed both Houses and that it will, no doubt, receive the approval of the Governor and become a law.

I have a copy of it as it passed the House, and find, upon examination, as I anticipated when I concluded to await your action, that it contains an amended provision, to which I shall call attention, that has been accepted by the Senate without change, as I am informed.

But before pointing this out, allow me to say again, as I have repeatedly said heretofore in public utterances and in public print, that there is no difference of opinion upon the point that there are abuses practiced by the railroads that should be prohibited and remedied, nor is there any difference of opinion as to the necessity for some kind of additional legislation to accomplish this purpose. The sole difference is as to what that legislation shall be.

Generally speaking, two propositions have been advanced: one to confer the rate-making power, as recommended by the President, on the Interstate Commerce Commission; the other to broaden and strengthen the jurisdiction and power of the courts under existing laws.

Many bills have been introduced embodying the former idea; a less number the second.

The first class of bills were intended by their respective authors to carry out the President's recommendation and were supposed to be in full compliance with the requirements thereof; the second class aimed to accomplish the same purpose, but by different methods.

Out of all these many propositions finally came the so-called Hepburn Bill, which, according to the announcements in the newspapers, had the special approval of the President and his Attorney-General, and was to

be supported as an Administration measure. It passed the House without amendment, although there was much dissatisfaction expressed therewith by the members of that body; was considered in the Senate Interstate Commerce Committee, and although there was much objection and discussion, all amendments were finally rejected and it was reported to the Senate, and is now under consideration as it came from the House. It is earnestly and vociferously insisted that it shall now be passed by the Senate and become a law "just as it passed the House."

Before commenting on this proposition, I call attention to the fact that the President in his Message of December 6, 1904, recommended that

"the Commission (Interstate Commerce) should be vested with the power, where a given rate has been challenged and after full hearing found to be unreasonable, to decide, *subject to judicial review*, what shall be a reasonable rate to take its place; the ruling of the Commission to take effect immediately, and *to obtain unless and until it is reversed by the court of review.*"

Secretary Taft in his speech as temporary chairman of the Ohio Republican State Convention of May 24, 1905, interpreted this recommendation of the President and the Esch-Townsend Bill, which had then passed the House of Representatives, as meaning that the orders of the Interstate Commerce Commission fixing rates and regulations, "*when made shall be effective until set aside by judicial hearing.*"

In his speech at Akron, October 21, 1905, Secretary Taft further said:

"The President's proposition is that the power of the Commission shall be to hear a complaint that a particular rate is unreasonable, to declare it to be unreasonable, and to fix the rate which should be reasonable, and embody this finding in an order which should stand *until set aside by a court either upon preliminary or final hearing.*"

It is believed, upon what is thought to be good authority, that both those speeches of Secretary Taft were made with the knowledge and approval of the President as correctly setting forth his views.

In the Esch-Townsend Bill and in the Interstate Commerce Bill, framed by the Interstate Commerce Commissioners and by them presented to the Interstate Commerce Committee of the Senate in November, 1905, and which was at the time supposed to be the most intelligent and authoritative presentation of the President's views, in the form of a bill, that could be framed, as well as in nineteen other bills that have since been introduced in the Senate and the House at this session of Congress, all, as their respective authors understood and believed, in substantial conformity in this respect with the President's recommendation, it was carefully provided in one form or another that the orders of the Commission fixing rates and prescribing regulations should be subject to review by the courts in proceedings instituted therefor by either the carrier, the shipper or any other party interested, as to whether or not they were lawfully made in accordance with the terms and conditions of the proposed statute that they should be just and reasonable.

In every one of sixteen States of the Union where Railroad Commissions or other officials have been authorized and empowered to fix rates

and prescribe regulations, suitable provisions have been made for a review by the courts of all such orders.

Such was the previous discussion, and such the character of legislation on the subject in the different States, and such the character of all the bills that had been introduced, when the Hepburn Bill made its appearance.

Like all the other bills it conferred the rate-making power, as recommended by the President, on the Interstate Commerce Commission, but unlike every similar statute enacted in the various States, and unlike every other similar bill introduced in Congress, and in direct conflict with the utterances of the President and every other person who had spoken for him, it not only fails to provide for a review by the courts, but it is intentionally so drawn, as some of its leading advocates acknowledge, as to prohibit such a review, not only upon the petition of the carrier, but also upon the petition of the shipper or any other person or community interested or affected by the orders of the Commission.

This feature of the bill was so unexpected, so unprecedented, so un-American and so in conflict with that rule of American life and American institutions that "every man is entitled to his day in court," that every other question raised by the proposed legislation has been overshadowed and almost lost sight of in the debate that is now in progress.

Notwithstanding the acute character of this particular question, in some remarks I made to the Senate on the 28th of February, I took occasion to discuss the general subject at length, pointing out as well as I could a number of the provisions of the bill that are, in my judgment, unconstitutional, and giving reasons why, in my opinion, the bill, if it should be enacted and be upheld by the courts, will prove a sore disappointment to all who are interested in securing such legislation, because of its manifest deficiencies as a remedy for any trouble of a serious character of which complaint has been made.

In view of your request I have taken the liberty of sending a copy of these remarks to each member of your body in order that all may know in full, if they so desire, the views I entertain, and the reasons for them, with respect to this measure, and with that purpose in mind, I ask that those remarks may be considered by reference as a part of this communication.

It is unnecessary for present purposes to review those remarks further than to call attention to the fact that I have undertaken to show that if we enact the Hepburn Bill as it passed the House, we must encounter a number of the most serious constitutional and legal questions, on account of which the measure will probably perish in the courts, and that, if it should stand that test, the law will not prevent or in any manner remedy the practice of giving secret rebates, making discriminations among individual shippers, the lack of uniformity in classification, or the evil to communities of unjust and discriminatory relative rates.

The House Committee in their report admit and concede all this and acknowledge that they do not attempt to deal with these evils.

In those remarks I undertake, not only to show these defects of the Hepburn Bill, but also to point out upon facts and testimony of an indisputable character, that by a simple amendment of the present

law, which I have already introduced in the Senate, the existing remedial provisions of the statute can be so broadened and strengthened as to reach and effectively prevent all these abuses.

This amendment involves but one hearing, and that in the courts, in a proceeding, in the name of the United States, without trouble to the shipper, under a requirement that the courts shall proceed summarily to hear the complaint, postponing all other business, in so far as may be necessary to enable it to do so, thus avoiding all delays. On this account this proceeding will be far more expeditious than the proceeding provided by the Hepburn Bill. It goes further and relieves the shipper of all expense of the litigation on account of which he has been heretofore so burdened and hampered, that in many cases he has preferred to suffer the wrongs to which he has been subjected rather than undertake, single-handed and alone, to fight a railroad before the Commission or in the courts.

In addition to these advantages, which would be of incalculable value to the aggrieved shipper, the proceeding would be under a statute that has already been upheld by the Supreme Court of the United States and under which more has been done to correct railroad evils than under any act of legislation that has yet been enacted by any of the States or the Federal Government.

No constitutional or legal questions can arise, for all have been discussed and passed upon by the court of last resort. There would be, therefore, in such a proceeding nothing experimental.

I have been hoping that in some form or other this kind of legislation, which could not prove otherwise than effective, may be enacted; but assuming that the Hepburn Bill in some form will be passed and become a law, I shall consider it my duty to do all in my power to make it a constitutional, workable and effective measure. My oath of office requires that, and I would not only violate that but also my duty to my constituents and the whole country if I were to do otherwise than follow its requirements.

With respect to this duty you have relieved me of all embarrassment by the action you have taken in adopting the amended provision above referred to, as a part of the measure you have just passed, to provide for a full and complete review in the courts of the orders of the Commission you have created; for now, in view of your action, I feel confirmed in the opinion that it is my duty to insist upon such amendments to the Hepburn Bill, as a condition precedent to the support of it, as will secure to carriers, shippers, communities and all others who may be parties in interest affected by the orders of the Commission, a right to appeal to the courts for a judicial determination of any questions that may arise involving or affecting their interests, for if such a provision is important in a State statute, it requires no argument to show it is much more important in a statute that applies to the whole country. I so conclude because this is necessarily and properly the interpretation you have placed upon the recommendation of the President, which you have quoted in your resolution. Your action was, of course, taken intelligently, deliberately and officially, but aside from the fact that it was taken in this intelligent and deliberate way is doubtless the further fact that because of the equity and justice involved you would not change your action even though the President might, for some reason sufficient for himself, see fit to

change his own views with respect to such a provision as it has been claimed, erroneously, I hope, he has done.

But however all that may be, upon your action in adopting this amended provision I most heartily congratulate you and the people of Ohio, for by it you have, at an opportune time, fittingly rebuked the sentiment that would if possible excite distrust of the courts, destroy their usefulness and debar them from their appropriate participation in the settlement of the great and far reaching questions which legislation of this character must precipitate, and at the same time you have put Ohio in harmony with all her sister States and with the spirit of fair play that underlies and characterizes our Constitution and all our institutions of government.

With felicitations upon the near approach of the conclusion of your labors and upon the very creditable record you have made, I remain, with sentiments of highest esteem,

Very truly yours, etc.,

J. B. FORAKER.

The reasons here stated and those given to the General Assembly of Ohio are only some of the many reasons that were from time to time, as occasion required, advanced by me in argument in the Senate, and in speeches made to public audiences and commercial bodies outside the Senate in opposition to the proposition.

My part in the debate in the Senate covered hundreds of pages of the *Congressional Record*, and my speeches outside the Senate in support of the same views were quite as numerous and extended.

It is impossible, therefore, to quote from them even in the most meagre way, without taking more space than I can properly devote to the subject.

Suffice it to say all the points mentioned and others were advanced and insisted upon, but without avail, except to secure amendments that greatly improved the measure—both as to its validity and its utility.

In addition to a general discussion of the main proposition that the rate-making power should not be taken away from the railroads and be conferred upon the Interstate Commerce Commission and that power be exercised exempt from judicial review, I made a careful analysis of the Hepburn Rate Bill, and showed, as I thought, very clearly that, if enacted in the form in which it had come to us from the House, it would probably be set aside by the courts, but that if upheld, it would bring disastrous results to the rail-

roads, and probably to the business of the country generally.

As showing my personal attitude I quote the following closing paragraph:

I regret that it has seemed necessary for me to so long detain the Senate. There is much more I would say if it were not that I fear I would overtax your patience. I reserve all that for some future opportunity, and content myself for this occasion with the addition of a word somewhat personal.

It is not either easy or agreeable to differ with the President. He is the head for the time being, not only of the nation, but also of the political party of which I am proud to be a member. I believe that the welfare of the nation is most beneficially affected and promoted by the supremacy of Republican policies, and on this account think every man who believes in the policies of that party should do all in his power to secure harmony of purpose and unity of action among its members with respect to national affairs. In this behalf he should be willing to make concessions in minor matters; but when questions arise of such commanding importance as those now under consideration it is the duty of every man who has an official responsibility to discharge with respect to them to make careful investigation and then act in accordance with the convictions he may reach as a result. To the best of my ability I have done that.

I dislike exceedingly, as every other public man does, to be arraigned before the country by unfriendly critics as prompted by unworthy motives in the attitude assumed, and to suffer in consequence in the esteem of the people. It is far pleasanter to go with the tide of public sentiment and enjoy the benefits of harmonious relations with co-workers in the public service and have the acclaim instead of the disapprobation of constituents; but no man who allows himself to be controlled against his judgment, by considerations of this character, can do his duty, or maintain his self-respect, or be entitled to retain the respect and confidence of his colleagues and constituents. If we enact this measure and it proves disappointing, as I believe it will, the people will not hear us to say in our defense that we legislated in response to their demands. They expect their representatives, especially in this body, with respect to questions of this character, to act intelligently, patriotically, and in accordance with their judgment and their oath of office which binds them to disregard public clamor and legislate for the public welfare as they see and understand it. We owe it to ourselves, as well as our constituents, to meet this just expectation.

As already stated, the Senate amendments greatly improved the bill. They made provision for judicial review and cured other defects. The record shows that I labored as faithfully to secure these amendments as though I had been thoroughly in favor of the measure. I did so, as I stated in the Senate, because I foresaw that otherwise the bill would in all probability become a law with its obnoxious provisions, and for

that reason I felt it my duty to make it as nearly acceptable as possible. I was unable to make it what I thought it should be, and, therefore, voted against it—the only Republican in the Senate who did so. Just before the vote was taken, May 18, 1906, addressing the Senate, I said:

MR. FORAKER: Mr. President, I wish to detain the Senate for only a very few sentences. I do not propose to go into any discussion of the merits of this measure. I want only to say about it that if I could vote upon it section by section I would be relieved from a great deal of embarrassment that I now experience, for there are in this bill, put there by the Senate amendment, a number of provisions that I desire most heartily to support and against which I do not like to vote.

I remain of the opinion I entertained with respect to this legislation from the very beginning of this controversy. My objection is to the Government going into the rate-making business at all, and particularly in the manner in which it is provided it shall go into it in this measure. I believe this bill in that particular to be unconstitutional, and I believe that the measure if upheld in the courts will in that respect prove a disappointment to the people who have asked this kind of legislation at the hands of Congress. I am not able to get the consent of my mind to vote for a measure that involves such consequences.

I take some comfort in the fact that while I may be alone in my vote, I am not alone in the opinions that are entertained by Senators on this point. Nearly every Senator who has spoken here today has expressed himself as disappointed to a greater or less degree in this legislation. The Senator from Colorado [Mr. TELLER], who has just taken his seat, one of the soundest in judgment, one of the most conservative legislators I have known in this association, has told us that the bill lacks in many respects what he thinks it should contain, and that he has, with respect to its fate in the court, the gravest doubt and apprehension. And in that form from one after another who have spoken, we have heard practically the same statement.

Mr. President, I may be wrong about it all; I, perhaps, have been; it seems to me I get on the wrong side of everything here of late; but there is one thing about it; I have been in keeping and in accord with my own judgment and convictions all the while. Mr. President, I have not opposed this measure because I did not believe there ought to be legislation. I think every Senator in this body knows that every time I have spoken I have insisted that there were practices and abuses and wrongs that ought to be legislated against. But I have been unable to agree that this is either a constitutional way or that it is the best and most efficient way to accomplish that end. I labored to formulate a plan, and I labored hard to induce others to see and understand my proposition as I saw and understood it. In that I have failed.

I might now waive my own preference about it, I suppose, and say that out of deference to the judgment of my colleagues I will sacrifice

my own convictions and vote with them. If I could see that there was any necessity for that I would, perhaps, be willing to do it. But as it has been said here, this measure will pass; it will pass by a unanimous vote, I suppose, except one; there will be one vote against it. I do not see how it would do any good to anybody, unless it would be to myself, to vote contrary to my own convictions as to what this legislation shall be. Inasmuch as it can not do any good to the country, and can not do any good to my party, or the interests that are to be legislated about, I prefer to carry away with me out of this controversy and contest the knowledge and the belief and the satisfaction that come to me from having the knowledge and the belief that I have acted as I have spoken and voted as I have spoken, in accordance with my own judgment and my own convictions.

The President, in his Message of December 4, 1906, rather exultantly referred to a number of statutes that had been enacted in accordance with his recommendations; among them the Hepburn law, of which he said that it had "rather amusingly falsified" the predictions of its opponents as to the ruin that would follow its enactment.

December 3, 1907, one year later, he had occasion to send another Message to Congress. In that he *might* have told how we were passing through one of the most serious, far-reaching and long-drawn-out panics that the country has ever sustained. But he didn't. He only told how, with manifest reference to the panic, we had outgrown the National Banking system, and how important it was to legislate with respect to our currency system so as to give it more elasticity, and how imperative it was to have an emergency currency to prevent fluctuations in the interest on call money which had "ranged from two per cent. to thirty per cent.," and "even greater during the preceding six months!"

Just what caused the panic of 1907 men differed about at the time, differ about yet, and perhaps always will differ about so long as they have occasion to express opinions on the subject. It was my opinion at that time and has been ever since that the railroad legislation was one of the chief contributing factors. There has been much prosperity in the country at times and places since then, but there never has been a day since the rate-making power was conferred on the Interstate Commerce Commission when the evil influences of

the law have not been felt to the serious detriment of the general volume and character of the business of the country.

In the very nature of things it could not be otherwise. To take away from the owners of sixteen billions of dollars of property the control of its revenue making power, instead of merely regulating it, thus stripping that property of its rightful credit, would necessarily, in greater or less degree, cripple it, and along therewith have a baneful effect on all kinds of business connected with or dependent thereon.

As one of the results we have seen the Interstate Commerce Commission, after months, and in some cases two or three years of consideration, either unable or unwilling, no matter which, to allow the railroads to change rates from time to time in harmony with the fluctuations in the cost of operation, and, therefore, at times we have seen the roads making not only less revenue than was needed for dividends, but less than was required for maintenance and equipment, or even operating expenses. In consequence we have seen them not only passing dividends and defaulting as to their fixed charges, but we have also seen them in many cases, to escape bankruptcy and receiverships, discontinuing scores of trains and laying off thousands of employees because of deficient earnings.

It is safe to say that the railroads have expended since this law was passed in 1906 hundreds of millions less for extensions, maintenance and equipment than they would have expended if no such law had been enacted.

It is equally safe to say that hundreds of millions of dollars less have been expended during this period by the railroads for the elimination of grades and curves, the enlargement of tunnels, the strengthening of bridges, the reconstruction of tracks and in the work generally of making transportation cheaper and safer for the shipping and traveling public than they would have expended on these accounts if they had not been deprived of the rate-making power. Not only have the roads been thus deprived of the control of the earning power of their property, but they have been harassed, annoyed and bedeviled by valuations and revaluations and by demands for reports on almost every conceivable account at a cost in time, labor and money amounting to many millions of dollars; and

all this without any substantial compensating benefits resulting therefrom to their patrons, either shippers or passengers. On the contrary, great detriment to all concerned has been the result.

That these things are true is shown by the official reports and publications with respect to the financial and physical conditions of the railroads appearing in the financial columns of our newspapers almost daily. I pointed all this out in the debates. What I then said does not differ from what we have witnessed, except only as prediction differs from history. In that fact time has brought vindication which I trust I may note with gratification, whether any one else recognizes it or not.

The following editorial from the *New York World* of December 11, 1914, is in line with thousands of such publications appearing in the daily press:

SIGNIFICANTLY SILENT.

The Interstate Commerce Commission in its annual report discusses about everything except its own inability constructively to handle its new rate-making power.

These powers were given to the Commission by Congress in 1910. They were first used at that time in vetoing new tariffs proposed by the railroads of official classification territory. It was then asked to reopen the case and refused.

When after three years the five per cent. advance in tariffs came up it was suspended, and in November of last year hearings were begun. They lasted all through the winter. They were followed by a week of argument early last May. This was followed by eighty days of deliberation, after which, or on July 29th, an uncertain decision was handed down which left the carriers just about where they were before. Next day war broke out in Europe, and on Sept. 15, the carriers asked for a rehearing because of conditions made worse by the war, and this is still undecided.

This rate case in general has been before the Commission over three years, without result. It has been in particular before the Commission over one year, without definite result. With all the facts in hand and with railroad earnings seriously affected by the war, the Commission after three months is still deliberating.

Was it the purpose of Congress in the act of 1910 to make railroad rates unchangeable except downward? This is not the understanding or the interest of the country. Railroad conditions change and rates should be elastic enough to change with them. If the Commission can not exercise its new powers accordingly, it is not a fit body to have them.*

* Since the text was dictated a dissenting opinion by Mr. Commissioner Harlan of the Interstate Commerce Commission rendered in

And as it has been with the railroads so it is to be next with all other kinds of business. The Federal Trade Commission recently created, the coming of which was plainly foretold, will soon be under full swing, and then the beauties of a paternalistic supervision and espionage by Government as to all kinds of business will be practically illustrated to the satisfaction of all, or rather *dis*-satisfaction of all.

The President speaks of the order of things so ushered in as a "new freedom" for business. In due time it will be given another and less popular name.

If the people were not literally "cowed" and afraid to act it would not be long until the work would commence of stopping this trend of legislation by abolishing at least half our commissions and restricting the activities of such as may survive. Until then business conditions will continue unsatisfactory and business men will achieve success only at the peril of all the dire punishments appropriate for malefactors of wealth.

what is known as the Western Advance Rate case, just decided, was published in the daily press, August 16, 1915, from which I quote as follows:

"Too much time and labor are expended in these recurring rate contests, and some way should be found under legislative authority for arriving at results more promptly than is now possible under our present powers and practices.

"The Commission should have authority, as we have often pointed out, to fix the minimum as well as the maximum rate.

"A uniform classification upon a normal basis, applicable throughout the entire country, . . . having sufficient elasticity to allow for varying operating costs, density of traffic, circuitous routes, competitive and other conditions under which transportation is conducted in different parts of the country may be possible of attainment, and I am satisfied that some effort looking to that end should be made."

In other words, the necessity for allowing the railroads some reasonable flexibility or elasticity in rates is coming at last, through bitter experience, to be recognized.

In the Cincinnati *Enquirer* of September 10, 1915, President Taft is reported as saying in a speech made at Seattle, September 9th:

"The close and absolute supervision over the management of the railroads, and the restriction upon the rates charged by them in interstate commerce and in commerce within states, together with the increase in cost of maintenance and of wages through the efforts of labor unions has ground the railroads between the upper and nether millstones. All this is to the detriment of the business of the country, and especially to the comfort and happiness of the wage earners dependent on normal business and normal demand for labor."

Mr. Taft further said that conditions identical with those affecting the railroads were to be found in all lines of business where large combinations of investment have been made.

CHAPTER XLI.

THE BROWNSVILLE AFFRAY.

ON the night of August 13-14, 1906, a shooting affray occurred in Brownsville, Texas, a military post. About two weeks prior thereto three companies, B, C and D of the 25th United States Infantry, colored, were sent there to relieve a battalion of the 26th United States Infantry, white soldiers, who had been stationed there for some time.

The colored battalion was commanded by Major C. W. Penrose. It was well officered and well disciplined and had a good record. Many of the soldiers had served three and four enlistments, and some of them more—a number of them were nearing the length of continuous service that entitled them to retire on three-fourths pay and with other valuable rights and privileges.

Their last station before going to Brownsville was at Fort Niobrara, Nebraska. At that station, and at all other stations they had sustained a good reputation as peaceable, docile, law-abiding, dutiful, well-drilled, well-disciplined, faithful and efficient soldiers.

When it became known that a battalion of colored troops had been ordered to Brownsville there was a protest made by the citizens of that community, on the ground that they were unwelcome because of their color. William H. Taft was then Secretary of War, but neither he nor any of the other authorities paid any attention to this opposition, although it was sanctioned and approved by others of prominence, among them Senator Culberson.

During the two weeks intervening between the arrival of the battalion at Brownsville and the shooting affray there were two or three altercations between citizens and members of Company C. In each case it was shown that the soldiers

were not at fault; that citizens provoked the trouble and the soldiers did not even resist, but rather only evaded and escaped. No member of either Company B or Company D had any trouble of any kind with anybody.

The police officers testified their conduct was better than that of the white soldiers who preceded them.

The soldiers were quartered in barracks situated inside a walled enclosure called Fort Brown.

The first official report was made by Major A. P. Blocksom, Division Inspector General. It was based on the unsworn statements of a number of citizens gathered by a self-constituted citizens committee. According to these statements it appeared that a few minutes before midnight, August 13th, shots were heard in the vicinity of the Fort; according to some of the citizens the first shots were fired inside the Fort. and from the barracks where the soldiers were quartered.

Omitting details, the charge was, and these statements were given to support the charge, that the firing so commenced was by a squad of from eight to twelve or fourteen, or at most, twenty soldiers, who, after the firing commenced, leaped over the wall surrounding the Fort, and went in a body up one of the streets of Brownsville a distance of two or three squares, where they turned about and from there returned to the Fort; that they fired in all some two or three hundred shots, some of them into houses, some into saloons and some into a hotel; that one man was killed and two others wounded.

These citizens, or some of them, claimed that, although it was a dark night, looking out from the windows of their houses they could see not only the firing squad passing up the street and back again, but they recognized them as negroes and soldiers, and claimed they could see that the arms they carried were rifles like those used by the soldiers.

It was further stated that the next morning, when light enough to see, shells and clips and various parts of a soldier's equipment were found scattered along the line of march, and that these shells, clips, etc., were all like those used by the soldiers.

Upon the demand of a local official twelve of the soldiers and an ex-soldier of the battalion who had been discharged a

few days before, were arrested upon suspicion until an investigation by the Grand Jury of the county could be had. The testimony shows that the Grand Jury made a very thorough investigation, but failed to find an indictment against any of the parties under arrest on the usual ground that the testimony presented to them did not show any "probable cause" for charging the men with guilt.

Thereupon the men were released from arrest and allowed to rejoin the battalion which had been in the meanwhile transferred to El Reno, where the testimony of the men was taken in affidavit form before a summary court in accordance with the provisions of the articles of war applicable, and before notaries public and others authorized to administer oaths, and where also the men were visited by General E. A. Garlington, the Inspector General of the Army, and further investigated and where they were given by him an opportunity by special authority from the President to confess that they were guilty of the crime that they were at the same time denying under oath.

Later the statements gathered by the citizens and given to Major Blocksom were supplemented by a report made by him, and later still a report was made by Lieutenant Colonel Leonard A. Lovering, another Division Inspector General, and finally a third report by General Garlington.

General Garlington reported that Major Blocksom's report was "exhaustive" and showed beyond "reasonable doubt" that the soldiers did the firing; that General Lovering's testimony was as to collateral matters, and "did not develop any material facts germane to the main issue;" that his own investigation failed to disclose any additional facts beyond those established by Blocksom, except that the men so uniformly and persistently denied guilt that they appeared to be banded together to "suppress the truth," but that "*he could not procure any evidence thereof.*"

Nevertheless he recommended that as an example to the whole army the whole battalion *should be found guilty of the shooting and of the concealment of the facts connected therewith, and be discharged without honor!* Upon the case so

presented the President was made to believe that the men were guilty not only of the shooting, but of what he characterized as "a conspiracy of silence," and that the recommendation of the Inspector General that the men be discharged without honor should be approved.

November 5, 1906, he accordingly so ordered.

The testimony given by the men before the summary court and the affidavits given as above mentioned do not appear to have been considered by General Garlington, or anybody else, or, if they were, they were entirely ignored in the reports made to the President, and ignored also by the President in the action afterward taken by him.

The character of the charge and the acceptance of the truth of it by the President and his action in visiting upon the men such summary, wholesale and drastic punishment caused me to read with some care the testimony on which the President acted. I had not yet seen the testimony given by the men.

Before doing this I had no doubt about their guilt. I knew there was a prejudice throughout the South against colored soldiers. I supposed there had been on this account more or less nagging of the men and that they, in an effort to revenge their wrongs, had been guilty of the outrages perpetrated.

What appeared in the newspapers and the action of the President all tended to create this impression, but when I read and analyzed the testimony on which the President acted, I saw at once that it was flimsy, unreliable and insufficient and untruthful, and this fact, in connection with the further fact, announced by the newspapers, that every man in the battalion had in the meanwhile given an affidavit positively and unqualifiedly denying guilt, or any knowledge of guilt, beyond that which was common to all, caused me to doubt their guilt and to conclude that it was my duty, if no one else would do so, to cause an investigation with a view to establishing whether or not any of the men did participate, either by actually engaging in the shooting, or by making themselves accessory, either before or afterward; and that if any were guilty, that

it might be ascertained who they were, and the punishment be restricted to them, and in that way the innocence of the others be established, and they be allowed to go acquit.

Accordingly, when the Congress reconvened in December, I offered a resolution directing the Secretary of War to send to the Senate all information in his possession on the subject.

A very spirited debate followed, from which I quote briefly as follows:

MR. FORAKER: Major Blocksom is the first inspector sent to Brownsville and the only one who went to Brownsville, and after he had been there and had carefully gone over the whole situation, and after he had examined all the witnesses and had inquired among the troops he saw fit to call upon, and after he had familiarized himself with the testimony taken by the citizens' committee, he wrote his report, in which occurs this statement:

"The officers appeared to be trying to find the criminals, but it is certainly unfortunate for the reputation of the battalion that they have *as yet hardly discovered a single clue* to such a terrible preconcerted crime committed by so many men."

Then on the 28th day of August, after he had completed his investigation and after the command had left there for El Reno, he reported to the War Department, to the Chief of Staff, saying, among other things:

"Almost *no evidence against men arrested*, though believe majority more or less guilty," etc.

The President does have power, as the Secretary of War says in the statement published in the papers this morning, to grant discharges without honor in contradistinction to discharges that are dishonorable and to discharges that are honorable. But running through all authority, and necessarily so because of the spirit of our institutions as well as the letter of the law, is this rule, that no such discharge can be granted by any order, from the President down, when it rests upon a conviction of a felony punishable with imprisonment in the penitentiary under the laws of the United States and when as a result of such discharge punishment is inflicted as though it had been in pursuance of the sentence of a court-martial.

Whenever it comes to the point where men are charged with the commission of a criminal act they are entitled to a trial before they are condemned, and they have that right, although they may be enlisted men in the Army of the United States. They have it under our constitutional guaranties, and they have it according to the letter of the statute that is applicable. I shall point out, when the proper time comes, that the Congress of the United States has been careful, in enacting the Articles of War and other statutes for the government and regulation of the Army, to provide that there shall be no con-

viction of any enlisted man of any offense upon which a discharge can be predicated until he has had a trial before a court-martial or some other duly constituted tribunal.

Is it possible, Mr. President, that by an Executive order men can be so convicted and punished?

But look, if you will bear with me a moment, to the result of this order. The resolution I have offered points out—and I had that in my mind—that we have a statute which provides that when a man has served for thirty years faithfully and honorably he shall have a right to retire on three-quarters pay with a monthly allowance of \$9 for clothing and subsistence. That can not be allowed to the man who is discharged without honor. It is only allowed to the man who is honorably discharged. I do not know how many men there are, but quite a number. I know, from the testimony which has been given, of those who have been discharged who would soon be entitled to be so retired. That is an important right. All retained pay is forfeited; so, too, their right to pensions.

Others have served more than twenty years and are entitled to membership in the Soldiers' Homes of the country. They lose that right. All of them, if honorably discharged, will be entitled to honorable burial, without cost to them, in national cemeteries. They lose that right.

So it is, Mr. President, that this broadens out, as I say, into a case where men are sent forth branded as criminals, three-fold criminals—men who have committed murder or who have suppressed the knowledge of murder, although called upon by the legal authorities to give that knowledge, and men who have committed perjury. They are branded with all these crimes, and as a result of it they are stripped not only of honors, but also of property rights.

My resolution was adopted. A few days later, December 19, 1906, the President sent to the Senate a message on the subject of the most vitriolic character. From almost the first sentence until the last it showed that he was irritated and full of the spirit of indignant resentment that the rightfulness of his action had been questioned. His language bore evidence on its face of intent to make it as nearly offensive to all who differed from him as it was possible to make an official communication without violating recognized proprieties and limitations.

The following brief excerpts will give some idea of its general character:

The soldiers were the aggressors from start to finish. They met with no substantial resistance, and one and all who took part in that raid

stand as deliberate murderers, who did murder one man, who tried to murder others, and who tried to murder women and children. The act was one of horrible atrocity.

There is no question as to the murder and the attempted murders; there is no question that some of the soldiers were guilty thereof; there is no question that many of their comrades privy to the deed have combined to shelter the criminals from justice.

In short, the evidence proves conclusively that a number of soldiers engaged in a deliberate and concerted attack as cold-blooded as it was cowardly, the purpose being to terrorize the community and to kill men, women and children, in their homes, in their beds and on the streets. . . . So much for the original crime. A blacker never stained the annals of our Army. It has been supplemented by another, only less black, in the shape of a successful conspiracy of silence for the purpose of shielding those who took part in the original conspiracy of murder. These soldiers were not schoolboys on a frolic. They were full-grown men, in the uniform of the United States Army, armed with deadly weapons, sworn to uphold the laws of the United States, and under every obligation of oath and honor not merely to refrain from criminality, but with the sturdiest rigor to hunt down criminality, and the crime they committed or connived at was murder.

It is vital for the Army to be imbued with the spirit which will make every man in it, and, above all, the officers and non-commissioned officers, feel it a matter of highest obligation to discover and punish, and not to shield the criminal in uniform.

Yet some of the non-commissioned officers and many of the men of the three companies in question have banded together in a conspiracy to protect the assassins and would-be assassins who have disgraced their uniform by the conduct above related. Many of these non-commissioned officers and men must have known, and all of them may have known, circumstances which would have led to the conviction of those engaged in the murderous assault. They have stolidly and as one man broken their oaths of enlistment and refused to help discover the criminals.

People have spoken as if this discharge from the service was punishment. I deny emphatically that such is the case, because as punishment it is utterly inadequate.

His assertions as to the facts of the case were followed by an effort to defend his authority to do what he had done, and to show that "there were plenty of precedents for the action taken." He then proceeded to call attention in detail to a number of cases where men had been discharged from the Army under circumstances that he claimed amounted to a

precedent for what he had done in this instance. From what he said on this point I quote as follows:

The 60th Ohio was summarily discharged on the ground that the regiment was disorganized, mutinous and worthless.

To the casual reader, uninformed as to the facts, and the official records of so-called precedents referred to, his message seemed very strong and very powerful, but to one who was as familiar as I had become with the testimony as to what the facts really were, it sounded like a tissue of extravagant and unwarranted misrepresentations from beginning to end.

So far as the "precedents" were concerned, I did not, when the message was read, know what they were, but I noticed that the Judge Advocate General, in submitting the so-called precedents, had stated that he had been unable to find *any* precedent for what the President had done.

That caused me to regard his entire Message not only as to the facts, but as to the law he had undertaken to quote, as calculated to mislead.

Apparently for my special benefit he said also that an effort had been made to discredit the investigation by pointing out that General Garlington was a Southerner, and then proceeded to say that

As it happens the disclosure of the guilt of the troops was made in the report of the officer who comes from Ohio, and the efforts of the officer who comes from South Carolina were confined to the endeavor to shield the innocent men of the companies in question, if any such there were, by securing information which would enable us adequately to punish the guilty.

I had not at any time said a word about General Garlington being a Southerner, neither had I said anything about the State or section from which anybody else had come who was connected with the matter.

Of Major Blocksom's report he said it

is most careful, is based upon the testimony of scores of eyewitnesses—testimony which conflicted only in non-essentials, and which established the essential facts beyond chance of successful contradiction.

And so on at great length.

The following day, December 20th, I answered. I commenced by saying, among other things:

I wish to say, in the first place, and I think Senators will bear me out in it, that I never deal in unqualifiedly positive statements unnecessarily, and I try always to avoid extravagance of speech in whatever I may see fit to say to my colleagues here in this body. I shall try particularly to be conservative and considerate in whatever I may say this morning.

I then proceeded to controvert the President's claim that he was possessed of constitutional authority and power to take the action he had taken in this instance. My claim being that, inasmuch as the men were charged with the crimes of murder, misprision of a felony and perjury, all of which they had denied under oath, they were entitled to a hearing before conviction and punishment. I supported this contention with a formidable array of authorities.

Referring to his statement that

People have spoken as if this discharge from the service was a punishment. I deny emphatically that such is the case, because as punishment it is utterly inadequate, I said:

Mr. President, we will agree that if these men committed this atrocious crime, the punishment of being discharged without honor is inadequate; if they deliberately committed murder, the punishment appropriate is death; and if their comrades deliberately were guilty of misprision of felony in refusing to give testimony as to facts of which they had knowledge, they committed a crime punishable with imprisonment in the penitentiary for three years. So the President is right in saying that the punishment he has imposed is inadequate. But, Mr. President, punishment does not have to be adequate to be punishment. It is punishment, although it may be grossly inadequate if measured by the character of the offense. If these men committed murder, as charged, the punishment is inadequate. If they were innocent of murder and innocent of misprision of felony, then is the punishment of a discharge without honor grossly exaggerated, harsh and brutal, for in that case they would not have committed any crime, and yet be severely punished.

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I called attention to the list of names of the discharged men:

The name that stands at the head of that list is Mingo Sanders, First Sergeant. I observe that he had served twenty-six years, a number of years in the Philippine Islands, in Cuba, and in the Indian

wars. He had been enlisted, I think, eight times, and each time honorably discharged before he was again re-enlisted. He enlisted eight times, as I have said, and at the end of each enlistment was discharged, and under the head "remarks," it is said each time, "excellent soldier," or "faithful and reliable soldier," or something of equivalent import every time he was discharged; a complimentary remark of that character—"faithful," "reliable," "excellent," "extremely good," "efficient," etc., showing that, in the language of the statute, he had served "honorably and faithfully" twenty-six years.

MR. SPOONER: What was his character?

MR. FORAKER: His character was excellent; and yet that man, whose character is excellent, is branded as a perjurer who has been in conspiracy to suppress the crime of murder. Why, Mr. President, an atrocious crime has been committed if that man is not guilty. When the facts are all known we will know who has committed the atrocious crime. This is only one case. I do not know how many more of these soldiers there were who had long terms of service to their credit; but they have all been discharged in that same way, with remarks of "excellent service," "faithful," "reliable service," etc. Such was the record of Mingo Sanders until in November last he was given this piece of paper, discharging him without honor, to carry around with him all the rest of his life, branding him as a criminal against the country he had been so faithfully serving, and included in the denunciation that is visited upon the men of this battalion. Is there no punishment involved? Is it anything but punishment, and was not punishment the avowed purpose?

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Coming then to review the testimony submitted, as a part of Major Blocksom's report, I quoted from the President as follows:

"Major Blocksom's report is most careful, is based upon the testimony of scores of eyewitnesses—testimony which conflicted only in non-essentials and which established the essential facts beyond chance of successful contradiction."

The President could not have counted the witnesses. We have them all here in the papers sent to us. We have a right to assume they are all here. We asked for them all, and the message informs us that the request of the Senate has been fully complied with. If so, we have every scrap of testimony to which the President referred when he said the guilt of the men belonging to this battalion who "shot up" the town has been established by "scores of eyewitnesses." Let us see about that.

I took some pains, after I read that over again at my home last evening, to look through this record and count the witnesses who appeared to testify against these soldiers to the effect that they had committed this offense.

There were two kinds of testimony taken. There was the testimony taken of the men themselves, to which I will call attention directly. That is testimony for the defense. Then testimony to convict the men

as responsible for this raid, this murder, and all this bad conduct was taken by a self-constituted citizen's committee, which testimony was confined to the citizens of the town who were "eyewitnesses" of what occurred. The President says there were scores. I say he did not count the witnesses. I have counted them.

I then reviewed the testimony in detail and showed that, in the first place, there were only twenty-one witnesses altogether, and that according to the statements of the witnesses themselves, there were at most only eight who pretended to have been eyewitnesses, and that the unsworn statements of the eight were not statements of facts so much as mere opinions, surmises and inferences that did not amount to evidence sufficient to show even probable guilt.

That cuts the number down to eight. In other words, instead of "scores of eyewitnesses" who have testified to this transaction, there are only eight men at most; for nobody will pretend that there are any other witnesses than those to whom I now call attention; nobody will pretend that there is any other witness, sworn or unsworn, who pretended as an eyewitness to detail what occurred. "Scores" would mean at least forty. Therefore I say the President has been imposed upon.

I then took up the President's reference to the fact that Major Blocksom, who had made this report, was from Ohio, and dealt with it as follows:

He has seen fit to point out with a great deal of particularity, as it seemed to me under the circumstances, that Major Blocksom, who reported this testimony to him, is from Ohio, and he points out that Major Blocksom has made a most careful report, and that Major Blocksom has reported the testimony of these scores of eyewitnesses.

Mr. President, I have not in this case commented on individuals. I have not said anything about General Garlington being a southern man, born in the South, born in South Carolina, I believe, and appointed from Georgia. I have assumed that he is a good officer and an honorable man. I have said nothing about Major Blocksom, but it seems to me he is intruded into this case by the President in a very prominent way as from Ohio, and that his report should be strengthened thereby; and we are told that it was Major Blocksom who got the testimony that fixed the guilt by scores of eyewitnesses. I will presently speak of the testimony of the eight eyewitnesses, but before I do that I wish to mention something else.

When a matter of this kind comes up, you do not generally have to ask for information. It is astonishing how kind people are. They send you information. My mail has borne to me a great deal. Among others that have come to me is the following. It comes from a most

reputable, a most honored man in the State of Ohio, a man of the highest character, who has known Major Blocksom all his life. I am going to read you what he says about him. Major Blocksom, I take great pleasure in saying, because he is from my State, is a good officer, but I want to say preliminarily to reading this that if there is a man from Ohio in the Army who, unfortunately, beyond any other, was unfitted for this special work, it was Major Blocksom. He is not aware of it, I imagine. Unconsciously he is the victim of early influences. Men are sometimes insensibly influenced. I think he was in this case. Here is what was written to me:

"Major Blocksom was born and reared in Zanesville, Ohio. His father, Augustus P. Blocksom, was a prominent attorney there. I knew him well. He was an active and radical Democratic politician, and was entirely consistent in his views with all the old war Democratic ideas, and never lost an opportunity to express these views in public. He was somewhat of an orator and could always find an interested audience among his Democratic hearers of the Vallandigham type. This is the kind of milk his son was fed upon."

I do not know how many of my colleagues here know just what a Vallandigham copperhead Democrat of Ohio was, but if there was a man in all this broad land who had an antipathy beyond another to a negro in that civil-war time it was that kind of a man. Everybody knows that. Sometime I may, or if I had more time I might now, say more on that subject. But it is not necessary. But this officer was the son of that kind of a father, and had in his youth that kind of political affiliation and that kind of political atmosphere. It is natural that he should inherit that prejudice and carry it with him and be insensibly influenced by it in the discharge of this very delicate duty. I think anybody could see, by simply reading his report, there was some kind of a screw loose with him.

Let me call attention to his report. I did not bring him into this case. The President has called attention to the fact that this officer comes from Ohio, and so he does; he was appointed to the academy on the recommendation of a very able and accomplished Democratic Congressman who represented that district at that time—back in 1872. Here is Major Blocksom's report:

Brownsville, Tex., August 29, 1906.

Here is the first line, the first jump out of the box:

I have the honor to report investigation of trouble caused by soldiers of Twenty-fifth Infantry.

Then he proceeded. Before he gets through he has occasion to speak of a number of people. One man who seems to have won his admiration and excited it unduly was a Captain McDonald, who is described as a captain of Texas Rangers, whatever they may be, and he pays him this high compliment. Now, Mr. President, think of this going into an official report:

I believe he—

Judge Welch—

threatened McDonald with arrest for contempt before the latter gave them up—

That is, the prisoners who were in his charge—

It is possible McDonald might have fought the entire battalion with his four or five rangers were their obedience as blind as his obstinacy. It is said here he is so brave he would not hesitate to "charge hell with one bucket of water."

(Laughter.)

Then immediately he says:

I met many sterling people in Brownsville.

Captain McDonald is, I suppose, a sterling man.

Mr. Spooner: What?

Mr. Foraker: S-t-e-r-l-i-n-g. Captain McDonald is one of them. Like Ben Adhem, his "name led all the rest."

He then concludes, this man from Ohio:

It must be confessed the colored soldier is much more aggressive in his attitude on the social equality question than he used to be.

What has that got to do with the shooting at Brownsville? Nothing, and I pass it over. I mention it only to show his animus. I speak of it because when the President intrudes the personality of Major Blocksom into this discussion I feel like it is due to the Senate to know who it is from Ohio who made this report, who went down to Brownsville and examined these witnesses, gathered up these unsworn, loose, conflicting, disjointed, and contradictory statements, which we are told amount to conclusive evidence of the guilt of these men of the most heinous crime ever committed by soldiers of the United States Army.

I might point out other things, but I have pointed out enough to show that Major Blocksom has not forgotten his early political affiliations, has not gotten entirely away from the influence of the political atmosphere he breathed in the days of his youth at Zanesville, Ohio. Well, that is enough for him.

Having succeeded, as I thought, in showing that the testimony accompanying Major Blocksom's report was not in any proper sense of the word testimony at all, but only a lot of loose, unsworn statements, utterly flimsy, insufficient and unreliable in character, I then spoke as follows of the testimony that had been taken for the defense:

Mr. Foraker: Now, opposed to the testimony of these eight is this testimony, taken in the form of affidavits, but taken before the summary court, Captain Lyon, who, I am told, is one of the best officers in the United States Army, a man of the highest character, a man who would not send to the President of the United States an affidavit that was given by one who he thought was an untruthful man. The very fact that the testimony was taken before Captain Lyon is a guaranty that it was properly taken, that these men told the truth as they understood it.

According to this testimony the firing commenced about midnight. The sentry says it commenced outside the walls of the garrison. He immediately ran to a point near the barracks, and, to give the alarm, fired his own piece three times in the air. One of these eight witnesses

testifies that he ran and looked out of his window and saw somebody inside the wall shooting up into the air. He saw the sentry, no doubt. He then ran back into his house, put out the light, and pulled down the blinds, so he would not get hurt. That is one of the eight on whose testimony these men are convicted of these heinous crimes.

They all testify that immediately after there turned out to be a continuance of the firing, the sergeant of the guard ordered the guard to fall in, and sent messages to the commanding officer to awaken him; and when the firing continued he ordered a call to arms to be sounded upon the bugle; and it was sounded, and immediately the whole post was aroused. Men jumped up out of their bunks and came down at midnight into the barracks room, dressing as rapidly as they could, some of them half dressed when they took their places in line; rushed to the gun racks, as told to do, to get their pieces, and every gun rack was found to be locked just as it had been locked the day before, except only one; and, in fact, that was found locked, too. But there has been a good deal made of the fact that it was broken open. A lieutenant, acting under the direct order of Major Penrose, to avoid the delay of waiting for the sergeant to get there with his key, ordered the gun rack to be broken open and the arms taken out, and that was done.

The men immediately fell into line, and before the firing ceased they formed their lines and the sergeants commenced the call of the roll, and when the call of the roll was commenced every commissioned officer was there, except only the officer of the day, who had been on duty and had gone to sleep and was sleeping so soundly that he could not be disturbed by a little thing like a raid. When the roll was called every man answered to his name and every gun was found in the gun racks. Every gun was handed out to the man to whom it belonged and every man was there. Oh, but we are told that while that is true—that while it turned out that when the roll was called they were all there, that all did answer and had their guns, yet the men who had jumped over the wall, fifteen or twenty of them, and gone down town, two or three blocks away, doing the firing, when it stopped rushed back to quarters, rejoined their commands, took their places in the ranks, answered to their names and exhibited their guns and showed that every man was there.

Consider this a moment. Not only the non-commissioned officers, whose duty it was to place the men in proper ranks, but the commissioned officers were present at the roll call; and at that time every commissioned officer of the command was alert. They all testify they thought the garrison was being attacked and they were looking for trouble to come over the wall toward them. Does any man believe that fifteen or twenty men, who had been engaged in an excitement of that character, shooting up the town, trying to murder people, rushing back under such circumstances, could get into camp, could join their commands, in the very presence of the non-commissioned officers and the commissioned officers also, and avoid being detected in doing so?

But the President said not only is the testimony conclusive so that no doubt can exist as to the guilt of certain of the men, whoever they may be, as to the raid, but that the testimony is equally conclusive to

show that there is a conspiracy of silence entered into by all these men. Now, let me call the attention of Senators to the facts.

I have already commented on the facts, as the President has, that he bases what he says, as he must of necessity, upon what is reported to him by the inspectors whom he sent there and in whom he has entire confidence. He says Major Blocksom went down to elicit the proof of the guilt, and secured that and came away. Then he determined that he would muster these men out if they did not tell on one another, for he was satisfied, not from evidence but from deduction, that they were guilty. So then he sent General Garlington, the Inspector of the Army, down to Fort Reno with instructions to advise the men that unless they came forward and testified to the facts within their knowledge, whereby their comrades could be convicted, they would all be mustered out without honor.

Now, hear what General Garlington says on the subject of a silent conspiracy:

"The uniform denial on the part of the enlisted men concerning the 'barrack talk' in regard to these acts of hostility upon the part of certain citizens of Brownsville indicated a *possible* general understanding among the enlisted men of this battalion as to the position they would take in the premises, *but I could find no evidence of such understanding.*"

He could not find any evidence. There is the officer of the Army, the Inspector-General, sent there for the express purpose of finding out whether or not testimony could be obtained to convict the men of that battalion, if there were any, who committed this crime, and he reports to the President that he made a labored and long-continued effort, advising the men of the penalty, the "extreme penalty," to use his own language, that would be imposed upon them if they failed to give him full information, and they gave him no information. They persisted, one and all, in saying: "I know nothing about it." In heaven's name, if a man is absolutely innocent, as these men claim to be, what else could he say? How otherwise could he prove his innocence? And that is now the new requirement.

So General Garlington, instead of reporting to the President that there is testimony which conclusively shows a conspiracy of silence to suppress testimony, reported to the President the very opposite, that *there is no testimony whatever*. That is what General Garlington says, and yet the President tells us in his message it is *conclusively established* not only that these men shot up the town, killing one man and wounding another, but also conclusively established that they have become conspirators to commit another crime, misprision of felony, punishable with three years in the penitentiary.

Then, on the top of that, every last one of them has gone before a duly constituted officer, the summary court, or a notary, and made affidavit that he has had no knowledge, and that affidavit we must believe is false is perjury. Perjury, misprision of felony, and murder are all branded upon the foreheads of these men as they are turned loose upon the world in their old days, after twenty-odd years for many of them,

after twenty-six years for one of them, to go up and down through this land they have done so much to serve, so much to protect, as disgraced and degraded men where they were before honored. And this not punishment!

Passing to the question of his authority and his so-called precedents, I said:

The President says there are plenty of precedents. Well, Mr. President, I do not know where he gets that information. He does not send anything from the Judge-Advocate-General to show that he had the support of that law officer of the Army in his contention that his constitutional power is sufficient to authorize him to make this dismissal, nor does he send anything from the Judge-Advocate-General that warrants the statement that there are plenty of precedents for what he has done. What is it that The Military Secretary says?

I read as follows:

"The Secretary to the President, in a letter dated December 1, 1906, advises the Secretary of War that the President would like to have him 'look up any precedents (Lee's or others) for the action taken in discharging the battalion of the Twenty-fifth Infantry, and if there exist any such, send them to the President'."

The Military Secretary, proceeding, says:

"A protracted examination of the official records has thus far resulted in failure to discover a precedent in the Regular Army for the discharge of those members of three companies of the Twenty-fifth Infantry who were present on the night of August 13, 1906, when an affray in the city of Brownsville took place."

After stating the facts in the so-called Lee case, he said:

In view of the foregoing statement it will be seen that the action taken in 1860 in the case of Company G, Eighth Infantry, is *not* a precedent for the action taken in 1906 in the case of members of the Twenty-fifth Infantry.

I say again somebody imposed on him when the President was led to say that there are plenty of precedents for what he has done here. I say there are no precedents.

But now one of these precedents cited is the Sixtieth Ohio. Here comes Ohio again:

"The Sixtieth Regiment, Ohio Infantry Volunteers, were summarily discharged November 10, 1862, pursuant to a telegram from the War Department, because the regiment was 'disorganized, mutinous, and worthless'."

Mr. President, it was with very great surprise and with very great pain I read that statement in the President's message of yesterday. I know something about the Sixtieth Ohio.

The Sixtieth Ohio was a one year's regiment. It was raised chiefly in Highland and adjoining counties. The colonel of it was William H. Trimble, of Hillsboro, a man whom I knew as intimately as a boy could know a man of full age and full of the affairs of the world. A more courtly gentleman, a more patriotic man, a more lovable man never volunteered as a soldier to defend the flag of this country.

He was related to Senator Trimble, who represented the State in this body after he had been a soldier and had been wounded at Fort Meigs, fighting the Indians in the war of 1812. He came here and died here, and his body rests now in the Congressional Cemetery. No name in our State is more honored than that of Trimble. It is the first time in the history of our State that anybody by the name of Trimble has ever been criticised for failure to adequately and fittingly and faithfully and heroically discharge any duty he assumed.

I then showed from the official record that the 60th Ohio was honorably mustered out because of expiration of term of service and that substantially all of the men at once re-enlisted and continued to render efficient and honorable service, and that their case was not, therefore, a precedent.

I have said that I thought at the time that I had successfully shown that the so-called testimony submitted by Blocksom did not warrant the assertions of the President made over and over again in his Message that it showed "conclusively" that the men did the shooting, or that they entered into a conspiracy of silence.

Evidently the President thought so, too, for he immediately sent Major Blocksom and Mr. Purdy, an Assistant Attorney General, to Brownsville to secure *additional* testimony *under oath*. Accordingly, when the Congress reconvened after the holidays we were favored with another Message transmitting the results of their labors, which we were told again showed "conclusively" what had been already shown "conclusively."

This brought on a running debate that continued until January 22nd, when my resolution authorizing an investigation was adopted.

The keynote of my contention was that the men had been condemned without a hearing, and that this was contrary to

the spirit of our institutions; that it was our duty to undo that wrong by giving them a chance to face their accusers. There were several of these speeches. In one of them, made January 17, 1907, I summed up my argument as follows:

Where a soldier is charged with crime and denies it and stands upon his rights, he has a right to a trial, and, without it there is no power lodged anywhere to say he is guilty and order him to be dismissed; there is no power lodged anywhere to indict a man by order; try a man by order; convict a man by order; and then punish him by order.

Mr. President, this limitation upon the power of the President is according to the spirit of American institutions that runs through all our legislation and all our political relations—the spirit that every man somewhere and some time and in some manner shall have his day in court when charged with crime. That, Mr. President, has been the law of the world from the beginning of civilization.

You remember that Festus reported the case of Paul to Agrippa, and that he declined to punish him or to find him guilty of any offense until he had a chance to be heard. I read verses 14, 15 and 16 of the twenty-fifth chapter of the Acts of the Apostles:

“14. And when they had been there many days Festus declared Paul’s cause unto the king, saying, There is a certain man left in bonds by Felix.

“15. About whom, when I was at Jerusalem, the chief priests and the elders of the Jews informed me, desiring to have judgment against him.

“16. To whom I answered. It is not the manner of the Romans to deliver any man to die, before that he which is accused have the accusers face to face and have license to answer for himself concerning the crime laid against him.”

That, Mr. President, has ever been the law of every civilized and every Christian country in all the history of the world. No man shall be convicted of crime until after he has been permitted to face his accusers and cross-examine the witnesses.

The debate grew constantly more and more strenuous, but it will be found that, although I repeatedly spoke at length, I confined myself to legitimate arguments and carefully avoided saying anything unnecessarily that should have wounded the dignity or the sensibilities of the President.

I did not, as the circumstances and facts might have warranted, so much as by the slightest reference, undertake to connect his action in dismissing the troops with the Booker T. Washington incident, although such connection was commonly made in ordinary conversations by those who privately criti-

cised his order of dismissal. Nor did I in any way attribute to him any selfish purpose of any kind, as many others did.

I was thus careful because, notwithstanding his champions in the Senate were constantly inviting responses that would sting, I was all the while hoping that, with the truth established, as I believed an investigation would establish it, the President would in a manly fashion undo the wrong he had done.

I knew he was somewhat provoked, but did not realize that his unfriendly feeling was serious, or that he would manifest publicly his displeasure.

I was, therefore, greatly surprised when, a few evenings after my resolution had been adopted, he unexpectedly made what was regarded by those present as an attack on me in a speech made by him at a dinner given by the famous Gridiron Club.

The character of his remarks and my answer to him were told in a letter I wrote a day or two afterward to my son, J. B. Foraker, Jr., who was then residing in Cincinnati. It was written while the facts were fresh in mind, and I can tell the story of that impromptu debate better by publishing what I then wrote than by anything I could write at this time. I, therefore, insert my letter, with the newspaper articles mentioned as inclosed; as to neither of which articles did I know its author at the time or now, which is only another way of saying I had nothing to do with them, either the writing or the publication of them.

January 29, 1907.

Dear Benson:—It has occurred to me that you might want to hear what really did happen at the Gridiron Club dinner last Saturday evening.

I did not know the President was to attend the dinner until after I arrived, and had no idea that I was to be called upon for any remarks, so that I was taken entirely by surprise when the chairman, at the conclusion of the President's speech, announced that "the hour for bloody sarcasm having arrived, he took the liberty of calling upon Senator Foraker for some remarks." I was most reluctant to respond. My first thought was to refuse to do so, for I did not feel equal to the occasion, but there then came calls for me from all over the room. I saw that I could not do otherwise, and, therefore, took the floor.

The President had, in the course of his remarks, referred to legislation for the regulation of railroads and corporations, and to the Browns-

ville discussion in the Senate as "academic," and to his own power with respect to that matter not being subject to review, etc., all with such language as to cause everybody to think, myself included, that he was speaking in that particular largely for my special benefit. It was, I learned afterwards, for this reason that others joined in the call for me made by the President of the club. I did not know when I took the floor where to commence, how to proceed, or where to leave off, but as nearly as I can recall, I commenced by saying that I always felt embarrassed when I undertook to address the Gridiron Club, because in the first place, all I knew I got from them, and always found it difficult to return it, but that I was particularly embarrassed on that occasion because the President had spoken, and, ordinarily, no one should speak after him, but that I could not interpret what the President had said and the call that had been made upon me as meaning other than I must, if I spoke at all, make some comments on his remarks. I then went on to say in answer to what he had said about governmental regulation of railroads and corporations, that I favored governmental supervision and regulation of railroads and corporations as much as he did; that our only difference was not as to whether there should be such regulation, but as to the character of legislation that should be enacted to secure it. I pointed out in that connection that my opposition to the rate bill had been because I thought it unconstitutional for reasons I had advanced in the debate in the Senate, and because I thought it unnecessary, in view of the Elkins Law, which we had enacted two years before, and which, if enforced, would break up all rebates and discriminations, as the suits brought during the last year have fully shown, and in the third place, because I thought so far as the rate-making power was concerned, the law would prove inefficient, and that all remedies would be sought under the Elkins Law rather than under the Hepburn Law, as has been, and is the case. I said I regarded it as my duty, having studied that question, and having those opinions, to advance them in debate, and to vote in accordance with them when the measure was put on its passage; that for that vote I was responsible to my constituency, and to nobody else; that I denied the right of anybody here, or elsewhere, to tell me how I should vote when great constitutional questions were involved; that I must vote on such measures according to my own convictions; that I was not making that statement for the first time; that I had been called to account before the last Republican State Convention in Ohio; that I had then and there stated to the Republicans of Ohio in convention assembled, that I would not be dictated to about my vote on such a measure; that I must vote according to my judgment and the obligations of my oath of office, which were just as sacred and as inviolate to a Senator as were the obligations of the President's oath, and that if they did not want me to continue as their Senator with that right accorded to me they could give the office to somebody else, for it would not longer carry with it any honor, or have for me any attractions. Such being my sentiments, I did not appreciate any kind of outside interference with members of the Senate or House in the discharge of their duties.

I then passed to the Brownsville incident and the President's declaration that the debate in the Senate had been purely "academic," because

all power with respect to that matter was vested in him, and that there was no power lodged anywhere to review his order discharging the men.

He had called attention to some lines under my picture in the souvenir of the evening, saying, in the language of one of them, "all coons look alike to me." A statement issued by the Executive Committee of the club on Monday, January 28th, with his approval, adds the words, "and all white persons look alike to me also." I did not hear these added words. Others say they did not, while some say he did use them. However it may be, I, in referring to the matter, said, in the language of the 14th Amendment, when legal and human rights were involved, all *persons* looked alike to me, intending to use a word broad enough to include whites and blacks—men, women and children alike.

I quoted as the basis of what I further said, a remark the President had made when he was discussing his policy with respect to corporations, viz., that no man in this country was so high or so low that he would not punish him, if he could, for violating the law, and, on the other hand, no man was either so high or so low that he would not give him the full protection of the law if innocent of offense against the law. I said I agreed with him entirely in that sentiment, but stated that I thought he had failed to apply that principle in the Brownsville case, where, according to his own statement of it, there were doubtless many men with splendid records as soldiers, absolutely innocent, yet branded as criminals, and dismissed without honor.

I spoke of Mingo Sanders, who had twenty-six years of service to his credit, and a record of honor for bravery in battle, being turned out, when he was nearing the time when he would have a right to retire on pay, without honor, stripped of all these valuable rights, and left dependent and disgraced in the midst of his countrymen whom he had served so faithfully, and yet I knew, and I had reason to believe from what I had seen in the newspapers, the President knew that he was as innocent of offense against the law of any kind whatever as the President himself, or any man in that audience.

I then said I had seen it stated in the newspapers that my purpose in insisting upon an investigation was that of a demagogue to secure the negro vote. I said I was glad to have opportunity to say, in that presence, that I had no such purpose; that if I knew my desires I had as little use as any other man in all this country for either white votes, or black votes, Northern votes, or Southern votes, Texas votes, or Ohio votes; that I was not after votes, but I was seeking to provide for these men an opportunity to be heard in their own defense, to give them a chance to confront their accusers and cross-examine their witnesses, and establish the real facts in the case, to the end that if it should appear that injustice had been done it might be righted; that I thought the purpose an honorable one, and was glad to think I had secured it by the investigation that had been ordered, and that all this was within my duty as a Senator, and that when the facts had all been established we would then, I thought, be able to show to the country, and to the President himself, that our debate had not been academic, but practical and serious, and in relation to an important purpose.

I then said in answer to some suggestions that had cropped out during the evening, that so far as my personal relations to the President

were concerned, I had not been much troubled; that there was a time, as the President well knew, when I loved him as though one of my own family, and that there was nothing legitimate or honorable that I would not have striven to do for him; that while I had that affectionate regard for him, yet I did not feel that it stood in the way, or that I had any right to allow it to stand in the way of my differing from the President, when, in my judgment, he was in error, as I thought he had been in all the cases where I had disagreed with him; that my differences had been in the open, and I thought the President himself would testify that I had fired no shots from ambush, and I thought he would further testify that, with the exception of two or three matters, I had heartily and cordially supported all the measures of his administration. Commenting on the suggestion that had also cropped out during the evening, that I did not very frequently go to the White House any more, I said I went there as often as I had any business, that I did not go there frequently because I had no occasion to go unless it would be to discuss questions of difference, and I had never found that either agreeable or profitable; that the President in such conversations always "had the drop on me;" that, being President, courtesy required me to defer to him, with the result that he generally did all the discussing, and I came away at the end of his conversation with the feeling that I had not accomplished anything; that I was too busy to spend any time in fruitless endeavors of that character, but that if I had any business I would go to the White House tomorrow, or the next day, or any other time when it called me there, and that I would expect to receive at the hands of the President cordial, considerate and kind treatment, such as was due from one official to another in the transaction of the public business, for I could not conceive how a manly and self-respecting man like the President could complain of another, who, maintaining his own opinions, was but obeying the law of self-respect.

I closed by saying that as it had been in the past so it would continue to the end.

These remarks were punctured from time to time with more or less applause. When I concluded there was quite a demonstration. A number left their seats and came over to where I was to congratulate me and to make kind expressions.

They were all of the general character of the following, which Senator Beveridge sent to me written on a card:

"Dear Senator:—I am against you, but I never so admired you as this instant. You are game, and you are masterful. You were altogether thoroughbred tonight."—*Beveridge.*

with the exception that he was the only one who said that he did not agree with me.

Presently, amid the hubbub, I heard some voice, and, looking toward the head of the table, I saw the President on his feet, appealing to the audience to become quiet, so that he might "make some remarks in answer to Senator Foraker." After a time there was sufficient subsidence of the noise and demonstration to enable him to proceed, but throughout his remarks there was a continual buzzing of conversation all over the room. When the President spoke he said he wanted to

reply to my remarks about Brownsville, and to say that no matter had received from him during all his administration more careful consideration than that. He further defended his order, but said nothing new. He then said that he wanted to bear testimony to the fact that while we had had some differences, yet I supported him as I had said, and he then proceeded to mention the confirmation of Ben Daniel, who was a Rough Rider whom he had appointed marshal for Arizona. He said there were serious charges against him (he had been in the penitentiary for stealing a mule, and had killed two men), but that he had been a gallant soldier, and that my instincts as a soldier had prompted me to favor his confirmation as an act of justice to a brother soldier, and that he had always appreciated my help in that matter.

I did not specially appreciate his allusion to what I had done in that instance, for, while I favored confirmation, yet I have never recalled with pride the fact that I did so.

There were many other matters of more importance that he might have referred to that it would have been more agreeable to me to have him recall.

When finally he was through and a song was sung, and twelve o'clock was reached, before either the program or the dinner had been completed, we were rather unceremoniously adjourned. I had intended to go up and speak to him, but the moment we were adjourned there was a general rush toward me, and I was kept standing in one spot, where my seat had been, for twenty or perhaps thirty minutes, until I could shake hands with, it seemed to me, nearly all who were in the room, and exchange a few words with each. It was a very friendly, cordial and complimentary ovation. I was so busily occupied in that way that I did not see the President with his party, including Secretary Root, Secretary Taft, and others, leave the room, but I am told they went out rather promptly, and without being detained as I was.

I have written you this account of the matter because I think you will be interested to read it, and because, while it is fresh in mind, I think it is well for me to relate the facts as nearly as I can.

It is perhaps the only time in the history of our government when a President and a Senator, or anybody else, for that matter, have engaged in a public debate.

I want you to know from me that I was not responsible for it, and that I am happy to know from all who heard me that I did not use a disrespectful word, or say anything to be regretted; that, on the contrary, I appeared to speak with more than ordinary ease, fluency, conciseness and effectiveness. I have had some very extravagant compliments paid me in that respect.

I do not mention this in any spirit of vanity, but only that you may know what seems to be, as nearly as I can gather it, the general opinion of those who heard us.

There will, no doubt, be some differences of opinion on all these points, but I am glad to believe that the overwhelming sentiment here is favorable to me. I have, in trying to narrate what occurred, no doubt omitted some things that I do not now recall. I was taken by surprise, and so busily occupied thinking what to say, and how to say it, that I realize that somebody else, who had nothing else to do, could observe and remember what occurred better than I could.

I realized when I was called upon that it was a most unusual and trying position into which I was forced. I was to answer the President in the presence of as critical an audience as could be assembled anywhere in the world. That thought put me on my guard and greatly helped me.

I should say in defense of myself for inflicting all this upon you, that I have been prompted to do so not alone by the thought that you would be interested to read it, but also by the insistence of your mother that I should do so. I enclose some newspaper accounts of the incident.

Affectionately, etc.,

J. B. FORAKER.

MR. J. B. FORAKER, JR.,
care Traction Company,
Cincinnati, Ohio.

WAR OF THE STRONG.

ROOSEVELT AND FORAKER STIRRED GRIDIRON GUESTS—SENATOR RUSHED TO ARMS—FOR ALMOST AN HOUR GREAT LEADERS EXCHANGED THRUSTS—OHIO SENATOR, QUICK TO ACCEPT CHALLENGE, DENIED EVEN THE PRESIDENT'S RIGHT TO INSTRUCT HIM IN HIS DUTIES—REBUKE PLAIN IN HIS DECLARATION THAT HISTORY WOULD RIGHTLY RECORD THE BROWNSVILLE CASE—PRESIDENT OPENED THE BALL.

(*Washington Post*, January 29, 1909.)

The tilt between the President and Senator Foraker at the Gridiron dinner on Saturday night can not be ignored or silenced by club etiquette. It was a battle royal.

The President saw fit to make an opening for attack and the Ohio Senator accepted the overture. The one preached a sermon on the duty of everyone to see the light as he saw it, and the other resented the encroachment, even of a President, upon the individual conscience.

Both the President and Senator were at their best. Mr. Roosevelt was forceful—more than strenuous—and cuttngly incisive. It is said to have been a speech of biting sarcasm, inter-larded with a vigorous vocabulary, ever at the President's wits' end. Those who sat under it knew instinctively that it would be countered.

It was taken by all who heard it as a direct challenge to Senator Foraker. More, indeed. It was taken as a lecture to him as an individual and the Senate as a whole, reprobating both for stirring up the Brownsville mess. It was delivered in a high, strident pitch, and sandwiched with gestures more than emphatic.

KNEW CLASH WAS COMING.

During its delivery it provoked amazement at its audacity, won not a little applause, but to the knowing it carried apprehension and unrest.

When Foraker arose to reply he was ashen white. He felt he had been singled out in a promiscuous company to be insulted. From the opening sentence he was more than virile. He did not mince words. He hurled back the gratuitous flings at himself and the Senate over his head. He denied even to a President the right to instruct him in his duties as a Senator. His review of the Brownsville episode was hardly felicitous, but it was keen and direct. His deduction that the

final record of the case would be rightly adjudged was in a vein of withering rebuke.

PRESIDENT WAITED RESTIVELY.

The arrows he shot back must have found a mark, for even before he finished the President was restive and eager to interject a running debate, rather than let the Senator alone undisturbed to the finish.

The President spoke thirty minutes. The Senator had the floor twenty minutes. In those fifty minutes, however, events occurred so fast that it curtailed four courses of the dinner.

Even Uncle Joe Cannon could not serve as a poultice. It is true all hands sang "Auld Lang Syne," and then rushed to the streets to catch their breath and gossip.

A SENSATIONAL ENCOUNTER.

"From almost any point of view," said a gentleman who was present, "it was an unfortunate and regrettable occurrence. But for the fact that the matter has to all intents and purposes become public property, I should not feel at liberty to say anything about it. Just how far the so-called proprieties must be observed in a case of this kind is an interesting question.

"The encounter between the President and Senator Foraker was of such a nature as to take it out of the ordinary category of happenings at a private dinner. It was sensational in the extreme, and nothing like it has ever taken place before.

"The responsibility for the unpleasant incident must, in my opinion, rest with the President, for he started the ball rolling, so to speak. I can best describe the incident by likening it to a battle in the prize ring. In the first round, Mr. Roosevelt entered the arena, wearing regulation boxing gloves. He made a long speech—a very long speech, for such an occasion. It was a condensation of his Japanese message and the Brownsville message, with copious citations from his annual message to Congress at the opening of the session in December. There was nothing new or startling in all this, and most of his auditors were able to check off his points in advance. However, toward the close Mr. Roosevelt veered around and touched up the Senate. He laid aside his soft gloves and put on a pair of the two-ounce kind.

"He laid special stress upon the Brownsville case, and disdainfully alluded to the 'academic discussion' that had taken place in that body. He was striking at Senator Foraker then. Afterward he rapped J. Pierpont Morgan and Henry H. Rogers, the vice-president of the Standard Oil Company. Looking squarely at them, he sounded what was intended to be a warning that they and other men, representative of Wall street, should not undertake to block the reforms he had set in motion and still had in contemplation.

THE MOB, THE MOB, THE MOB.

"He declared it was well for them that the reforms were being put through by the forces of conservatism, for, otherwise, 'the mob, the mob, the mob' spirit might become crowned and plutocracy would be shown no mercy or consideration.

"Morgan and Rogers flushed deeply, while other guests squirmed in their seats. The situation was becoming strained, and the course of the dinner had become interrupted.

"When the President concluded, Mr. Blythe, the toastmaster, called on Senator Foraker for a reply, for he evidently felt that, since there were many Senators present and the Ohio man personally had been the target for some of Mr. Roosevelt's shafts, it was the appropriate thing to call on him.

"The Senator boldly accepted the President's challenge. Personally, I believe he would not have selected such a time or place for an encounter with the President, but as he had been attacked he had a right to defend himself. I have heard Mr. Foraker in the Senate on many occasions, but I have never seen him appear to better advantage than he did on Saturday night. He was truly eloquent, and gave the President the plainest talk he has probably ever listened to. I did not look at his hands, but I think he had on one-ounce gloves. His blows were hard and landed with great force. To the Ohio Senator the President of the United States looked the same as any other individual. In a word, the President was only a citizen.

LECTURED THE PRESIDENT.

"He first told Mr. Roosevelt that he would discover by the time the Senate concluded its investigation of the Brownsville case that the discussion in the Senate had been more than academic, and ventured to predict that the results would prove it.

"Then he read the President a lecture, which those who heard it will never forget. It was one of the most complete and effective exhortations I ever heard. Possibly the sting of the President's remarks was intensified by the knowledge that the friends of the administration in Ohio are trying to destroy him politically, although that is merely surmise on my part. Apparently he was inspired only by indignation. He declared with great dramatic effect that his oath of office was as sacred to him as was the President's to him, and no preachments from the White House were essential to the proper performance of his duty as a Senator. He gradually worked up to a splendid climax, declaring, with arms outstretched toward the President:

"No one in this country ever loved the President more than I did. No one ever fought harder for him, or more loyally. That was when he was in the right. But wrong, I have opposed him, and shall always do so. That is the way I see my duty to my conscience, my constituents, and my country, and I am glad I am able to say this in the presence of our distinguished Chief Magistrate. The people of my own State know I do my duty as I see it, and they know, as I myself have told them, that they can retire me if they believe I have a misconception of it."

ROOSEVELT BACK TO THE FRAY.

"The President chafed under the pointed and courageous words of the Ohio Senator, and would have interrupted him but for the

restraining hand of the toastmaster. Finally, when the Senator finished he jumped to his feet and struck back, but he did not have time, nor could he find words to retort effectively. But he was mad clear through when he declared, between clinched teeth, that the only place the Brownsville battalion could get justice was at the White House—the Senate could not mete it out to the discharged negroes, because the power lay with him, and him alone.”

ROOSEVELT AND FORAKER.

(From Washington *Herald*.)

Ability is going to waste in public life because it lacks that essential accompanying component—courage. Rooseveltian courage has not become contagious. There are statesmen who at heart cordially approve the Administration's domestic policies, but who dare not say so. Other statesmen, apparently the majority, are negatively arrayed against the President, but dare not publicly make known the fact. Calling themselves conservatives, they are called reactionaries. They would have a President who would “let well enough alone;” they would give the Presidential pendulum a backward swing.

In this interesting political crisis it is refreshing to find one Republican—a solitary commanding figure—out in the open, standing for something and unafraid; a statesman of convictions; of courage to express them, even if they do happen to run counter to the views of the powers that be. The Hon. Joseph Benson Foraker of Ohio, is that Republican. He is the bravest man in public life today—outside the White House. Right or wrong, as to Brownsville or the railroads, he is challenging his country's admiration. He challenged it a year ago. We have no doubt he challenges the admiration of the President himself. A manly man respects a manly foe. There is scant manliness, we regret to say, in the present-day trend of Republican politics.

Call him reactionary, if you like, but in the United States Senate, when it comes to courage, Foraker looms up “the noblest Roman of them all.” *

* Since the text was in print Arthur W. Dunn's “Gridiron Nights” has relieved me of all the misgivings I had in publishing what I have said about the Gridiron dinner-debate with the President by giving an account so nearly in accord with my own that I feel I am neither abusing the confidence enjoined upon the guests of the Club nor misrepresenting in the slightest any of the facts I have stated.

CHAPTER XLII.

THE BROWNSVILLE AFFRAY—*Continued.*

THE relations of President Roosevelt and myself were strained before the Gridiron Club encounter. They were practically broken off by that incident. I heard a few days afterward warlike reports from the White House; among other things, that it had been determined that I must be "eliminated" from public life.

I hoped as time passed the wounds would heal, but I was disappointed. Active hostilities soon commenced. The President fired the first shot when he sent me the following letter:

WHITE HOUSE.
WASHINGTON.

March 18, 1907.

My Dear Senator Foraker:—After careful consideration of the different candidates for appointment as judge in the newly created district in Ohio, I have come to the conclusion that Mr. John E. Sater, of Columbus, Ohio, best meets the requirements, and I shall accordingly give him a recess appointment.

Sincerely yours,

THEODORE ROOSEVELT.

HON. J. B. FORAKER,
United States Senate.

This was not the first trouble I had had with him on account of patronage, but I think it was the last, for the reason, among others, that I never afterward made a recommendation to him of anybody for anything.

April 14, 1904, following a personal interview with him regarding patronage, in accordance with his request, I wrote him a letter in the nature of a memorandum as to three or four different appointments I had recommended. I concluded that letter as follows:

These cover all the matters, so far as I can recall, about which I was to send you a memorandum.

I do not think you have any idea, Mr. President, how exceedingly disagreeable this matter of patronage is to me. It would be disagreeable under any circumstances, but it is particularly so under those which have heretofore obtained and which seem to continue. I do not wish to be impatient or to add in any manner to your cares and burdens and troubles, but I hope it will not be necessary for me to trouble you again with a personal interview in regard to these or any other appointments. If the situation heretofore obtaining can not be changed, or at least greatly improved, I shall respectfully decline to have anything to do with the appointments from Ohio except only as it may be my privilege and duty to take action with respect to them in the Senate.

Very truly yours, etc.,

J. B. FORAKER.

What I thus said to him expressed exactly my attitude with respect to all appointments throughout my service in the Senate. I disliked exceedingly that particular part of my official duty. I was always absorbed in the study and preparation for discussion of the great questions that were from time to time before the Senate. That not only made it impossible for me to give much attention to patronage, but made the whole subject of patronage disagreeable; so disagreeable, in fact, that I would not have had anything whatever to do with it had it not been that I had a duty to discharge in connection therewith.

I recognized that this duty required me to make recommendations and that the dignity of my position required that my recommendations should be respected. Disregard of them involved not only disrespect, but also serious political disadvantage.

In March, 1907, when the President informed me that he had concluded to appoint Judge Sater, there was a recommendation made by me pending before him for the appointment of Judge John J. Adams of Zanesville, Ohio. It had been published in all the newspapers of Ohio that I had indorsed Judge Adams and it was apparently assumed that, inasmuch as I was the senior Senator from Ohio and a member of the Judiciary Committee of the Senate and the judgeship in question was for the Southern District of Ohio, in which I resided, he would, of course, be appointed.

No better man for the position lived in the district. He had served successfully, even with distinction, as a Judge of

our State Circuit Court. He had the confidence and respect of everybody and he had already been congratulated by friends and the members of the bar generally upon his forthcoming appointment. To deny him that appointment meant, therefore, humiliation and mortification for him, and it meant a serious impairment of my political standing and prestige with the people of Ohio, because the position was one of so much importance and my recommendation of Judge Adams was so widely known that refusal to appoint him was practically an official declaration that my recommendations would no longer be honored.

I had the satisfaction of knowing that practically every member of the Senate, Democrat and Republican alike, felt that the President's action involved political mistreatment on account of which Judge Sater's appointment could not be confirmed until I saw fit to request it.

If I had asked the Senate to do so, his appointment would doubtless have been rejected promptly and well-nigh unanimously, but I did not wish to show my resentment of the President's affront by visiting on the Judge such a severe consequence, and, therefore, contented myself with simply delaying confirmation until shortly before my term of office expired.

Returning now to the Brownsville affray, the investigation called for by my resolution commenced a few days after the Gridiron Club dinner, and with slight interruptions, continued during the sessions of Congress for more than a year, until March, 1908, when a majority of the committee reported that the shooting had been done by members of the battalion, but that they were unable to identify any of the guilty parties.

There were eight Republicans on the committee, four of them joined with the Democrats, all of whom were against the Negroes before a word of testimony was heard, and made the majority report. The other four Republicans on the committee, Senator Scott of West Virginia, Senator Hemenway of Indiana, Senator Bulkeley of Connecticut, and myself made a minority report, in which we found that the testimony failed to prove that anybody in the battalion had participated

in the shooting, or was guilty of having entered into a conspiracy of silence to suppress the truth.

Senator Bulkeley and I made a separate report, in which we not only found that the testimony was insufficient to implicate the men in the shooting, but that the weight of the testimony was clearly and overwhelmingly to the effect that the men had nothing whatever to do with the shooting, and, therefore, of course, were also innocent of the charge that they had withheld any knowledge about it from the authorities.

This report, signed by Senator Bulkeley and myself, reviewed all the testimony in great detail. We not only quoted from different witnesses who supported our conclusions, but we analyzed the circumstantial evidence and pointed out that when properly interpreted it showed beyond any doubt whatever the innocence of the men.

I would quote from this report if it were not that a few days later I made a speech in the Senate, in which I carefully reviewed it and all the facts in the case from the beginning.

This speech was, as I think, so absolutely fair and so entirely conclusive in favor of the men, that I deem it a duty to them and to all who may hereafter seek the truth, to quote from it at length.

I made my speech April 14, 1908, and, among other things, said:

Mr. President, before discussing the proposed legislation I desire to review and analyze the testimony that has been taken before the Committee on Military Affairs.

The resolution under which the investigation was had precluded the committee from considering the question of the authority of the President to make the order under which the troops were discharged without honor, and confined the committee to an investigation of the facts and a report of the same to the Senate.

The committee observed this direction. While this direction probably does not preclude me from discussing the constitutional right and power of the President to make such an order, yet I have fully discussed that subject on other occasions and do not for that reason care to repeat that argument now. I shall confine myself, therefore in what I have to say at this time, as the committee did, to the facts, and it will be my endeavor to show the effect of the facts that have been established by the testimony that has been taken.

Before entering upon this labor, it may not be amiss to remark, in view of the many misstatements that have been made, that the purpose

of this investigation has not been to embarrass the President or anybody else; nor has it been to make any capital of any kind, political or otherwise, against anybody or for anybody.

On the contrary, it has been solely to establish, if possible, who did the shooting at Brownsville on the night of August 13-14, 1906, and, if it should turn out that the shooting was done by any of the discharged soldiers of the Twenty-fifth United States Infantry, to identify, if possible, the particular individuals who were guilty of participating in such shooting, and to identify, also, if possible, any accessories either before or after the affray, and to ascertain, also, whether or not in any event there has been any so-called "conspiracy of silence" on account of which the men, or any of them, have withheld any information of which they may be possessed in regard to such shooting affray; and this has been done with a view of giving effect in a practical way to the suggestions of the President himself, who, in his communications to Congress on this subject, has stated in substance that if at any time it should appear that any of the men discharged were free from guilt with respect to the matter they might be exempted from the operations of the order of discharge without honor and be restored to any rights they may have lost on account thereof.

With this purpose in view, about sixty of the men discharged were called as witnesses, among them, in so far as they could be reached with subpoenas, the non-commissioned officers of the three companies, the men who were on guard duty that night, and every soldier with respect to whom there was the slightest cause to think he might have any knowledge that would be of any importance in establishing the purposes of the investigation.

The witnesses so called embraced, in so far as the committee were able to judge, all those non-commissioned officers and soldiers of the battalion who were in a situation to know, and who of necessity would have known, something of the facts of such a raid if the raiders were soldiers of the garrison.

The investigation has one unusual feature, in view of the character of it, that merits a word of explanation, and that is the fact that the men who were charged with guilt were first heard by the committee in their own defense, and then, after they had so testified, witnesses were called to show their guilt.

This grew out of the fact that the President acted, in making his order for the discharge of the men without honor, upon testimony submitted to him by the inspecting officers of the Army.

This testimony consisted of unsworn statements made by citizens of Brownsville immediately after the shooting affray occurred and by such statements as these inspecting officers felt warranted in making, based on their investigations at Brownsville and later at El Reno, to which post the battalion was removed a few days after the shooting occurred and at which post the battalion was stationed when the men were discharged.

This testimony and these official reports of the inspecting officers were thought to be, as a result of the discussion that occurred in the Senate, insufficient to warrant the action that had been taken in discharging the men.

In consequence, the President directed Mr. Purdy, an assistant to the Attorney-General, and Major Blocksom to visit Brownsville and retake the testimony upon which his action had been based in the form of affidavits.

Attached to this testimony were a number of exhibits, such as bullets, that were said to have been cut out of the houses of Brownsville, into which they were fired on the night of the affray; exploded shells and a number of cartridges that were found in the streets at points where the shooting had occurred, and a bandolier which was picked up on the route over which the raiders passed.

In addition, some testimony was submitted of experts and ordnance officers supporting the conclusion that had been arrived at that soldiers of the Twenty-fifth United States Infantry had done the firing.

This testimony was reviewed and submitted to the President by the Secretary of War as conclusively establishing the guilt of the men.

The President transmitted this testimony to the Senate, together with the report to him of the Secretary of War, and announced in his message of transmittal that, in his opinion, the testimony showed beyond a reasonable doubt the guilt of the men.

When, therefore, the Senate ordered the investigation, it was to give the men an opportunity to meet the case that had so been made against them. For that reason they were called first, and after they had testified in such numbers that every member of the committee was satisfied that to call additional witnesses from the soldiers was unnecessary in order to get all information that could be secured from that source, the taking of further testimony by the soldiers was suspended.

Thereupon, in order to again convict the men of the crime with which they had been charged, the same witnesses who had twice before testified were recalled and examined and cross-examined at great length before the committee together with other additional witnesses. After this testimony had been taken a number of officers of the battalion and some of the men were recalled in rebuttal.

So it is that in a most important case, involving in its various phases the charge of raiding, and the shooting up of the town, the commission of murder, assaults with intent to kill, perjury, and conspiracy to withhold testimony to screen the guilty of crimes amounting to felonies, punishable with imprisonment in the penitentiary, we have the unprecedented spectacle of the men charged being required to appear and prove their innocence, and then to be again, for a third time, subjected to the accusative testimony upon which the whole case against them does and must of necessity rest.

While it may be said that this does not alter the truth, yet it remains that it is a violation of the practice that has been observed since the beginning of the common law for the protection of those who were charged with crime, and a practice that has for the accused in all cases where crime is charged only that reasonable advantage of fully advising the accused before he enters upon his defense of what it is that he is accused and with what testimony in all its details it is sought to establish such accusation. I do not mention this to complain about it, for the record will disclose to any unbiased man who may study it that, notwithstanding this disadvantage, and notwithstanding the many other

disadvantages to which these men were subjected, they have given their evidence with such straightforward frankness and with such manifest truthfulness that, in my opinion, nothing remains to show their complete vindication except only the discovery of the real culprits, which time will surely make unless the adage that "murder will out" has ceased to be a truth.

It is necessary to an intelligent discussion of the testimony to make a brief explanatory statement as to the general situation at Brownsville on the night of the affray.

The Government reservation known as "Fort Brown" is situated on the bank of the Rio Grande river immediately opposite Matamoros, Mexico, and within the limits of the town of Brownsville, the principal streets and parts of which are immediately north of the reservation.

The reservation is bounded on the northern side by a brick wall some 4 or 5 feet in height at the point where the principal part of the shooting affray is alleged to have commenced.

The garrison consisted of three companies—B, C, and D of the Twenty-fifth United States Infantry, colored.

These were quartered in barracks that stood in a line 100 feet south of the reservation wall, so that the rear of the barracks looked out northwardly toward the town.

The main gate or entrance to the reservation opened out into Elizabeth street, which was the principal street of Brownsville.

These companies occupied separate barracks. D Company barracks stood to the left of the road leading out of the reservation through the main entrance into Elizabeth street; B Company barracks stood immediately to the right of this road, and C Company barracks stood next on the right of B barracks.

The barracks fronted on a parade ground, on the opposite side of which were the quarters of the officers, occupied on the night of the affray by Maj. Charles W. Penrose, the commanding officer of the battalion and the post; Captain Lyon, commanding Company D; Captain Macklin, commanding Company C; Lieutenant Lawrason, commanding Company B, and Lieutenant Grier, acting quartermaster and commissary of the post.

Parallel with Elizabeth street and 120 feet eastwardly from the same, in the middle of the block, is an alley, 20 feet in width, known in the testimony as "Cowen alley."

The mouth of this alley approaches the fort at a point about opposite the space between the B Company and C Company barracks.

Along the wall outside the reservation was a road 30 feet in width, called the Garrison road.

Along the wall inside the reservation were the sinks, coal houses, and other outbuildings of the barracks.

The barracks were two-story buildings, with lower and upper porches in rear along their entire length.

Each of these barracks was about 165 feet in length. The upper porch was only 12 feet above the ground.

The charge against the soldiers is that a few minutes before midnight, August 13, 1906, a squad, estimated by the different witnesses all the way from five or six to twenty, in pursuance of a carefully planned

and preconcerted conspiracy to shoot up the town, in some way secured their guns from the gun racks, opened fire on the town from the upper porch of B barracks, then rushed down to the ground, and to the wall separating the reservation from the town, jumped over the wall at a point opposite the Cowen alley, proceeded northwardly along that alley a distance of two or three squares, shooting into the houses, hotels, and saloons, and at citizens on the streets with the result that they fired probably from two to three hundred shots, killed a bartender of the Tillman saloon by the name of Frank Natus, killed the horse of the lieutenant of police, Dominguez, wounding him in his left arm, and did other damages of one kind and another; that at the corner of the alley and Thirteenth street, where the Miller Hotel is situated, the squad divided, one portion of it going east on Thirteenth street to Washington street, the next street east of Elizabeth street, where they fired a number of shots into the house of a revenue deputy by the name of Starck; that after this, which was the last of the firing, they returned to the fort and joined their companies without being detected by their officers, who were at that time wide-awake and engaged in the formation of the companies.

Finally, under the stress of circumstances, it was further charged that, in the nature of things, it was impossible for such a squad of soldiers to plan and execute such a conspiracy without many, if not all, of the other members of the battalion having knowledge which, if disclosed, would identify the particular individuals who participated in the shooting, and that the inability of the inspection officers and others to secure any such information was to be attributed to a conspiracy of silence into which all having such knowledge, whether few or many, must have entered.

The gradual evolution of this last charge is interesting, suggestive, and instructive.

It had its inception, so far as the record discloses, in the following passage from the report of Major Blocksom, dated at Brownsville August 29, 1906:

"The officers appeared to be trying to find the criminals, but it is certainly unfortunate for the reputation of the battalion that they have as yet hardly discovered a single clue to such a terrible preconcerted crime, committed by so many men.

"I believe the battalion had an excellent reputation up to the 18th of August, but the stain now upon it is the worst I have ever seen in the Army.

"Many of its old soldiers who had nothing to do with the raid must know something tangible as to identity of the criminals. If they do not disclose their knowledge, they should be made to suffer with others more guilty, as far as the law will permit. If satisfactory evidence concerning the identity of the criminals does not come from members of the battalion before a certain date to be fixed by the War Department, I recommend that all enlisted men of the three companies present on the night of August 13th be discharged from the service and debarred from re-enlistment in the Army, Navy or Marine Corps."

This suggestion, without the help of any further testimony, took definite form in the order of October 4, 1906, issued by the Assistant Secretary of War, directing General Garlington to make an investigation, in the following language:

"The President authorizes you to make known to those concerned the orders given by him in this case, namely: 'If the guilty parties can not be discovered, the President approves the recommendation that the whole three companies implicated in this atrocious outrage should be dismissed, and the men forever debarred from re-enlisting in the Army or Navy of the United States.'

"And in this connection the President further authorizes you to make known to those concerned that unless such enlisted men of the Twenty-fifth Infantry as may have knowledge of the facts relating to the shooting, killing and riotous conduct on the part of the men with the organizations serving at Fort Brown, Texas, on the night of the 13th of August, 1906, report to you such facts and all other circumstances within their knowledge which will assist in apprehending the guilty parties, orders will be immediately issued from the War Department discharging every man in Companies B, C and D, of the Twenty-fifth Infantry, without honor, and forever debarring them from re-enlisting in the Army or Navy of the United States, as well as from employment in any civil capacity under the Government.

"The time to be given to the enlisted men of Companies B, C and D, Twenty-fifth Infantry, for consideration of the ultimatum will be determined by you. If, at the end of the time designated, the facts and circumstances of the occurrence in question have not been established sufficiently clearly to indicate a reasonable certainty of securing a conviction of the guilty parties by evidence obtained from enlisted men of the first battalion, Twenty-fifth Infantry, you will report the condition by wire to the Military Secretary."

General Garlington made his investigation, therefore, with this thought before him, but made no further progress than to suggest in a vague sort of way that the men had "possibly" come to a common understanding that they would not give any information of which they might be possessed that would lead to the identification of any of the raiders.

On this point he said in his report that all the men denied guilt, or guilty knowledge, but that these denials—

"indicated a possible general understanding among the enlisted men of this battalion of the position they would take in the premises—"

And I call the attention of Senators particularly to this—

"but I could find no evidence of such understanding."

No evidence that there was any conspiracy of silence. I emphasize that, because that, you will discover as we proceed, is an important part of this case in so far as there is any case left.

Upon this report, without an iota of additional testimony—in other words, upon the mere suggestion of General Garlington and others that an agreement to withhold testimony had been entered into among the men, of which General Garlington was *careful to say he had found no evidence*—the President ordered all the men discharged.

Of that which was only "possible," in the opinion of General Garlington, and of which he "could find no evidence," the President, without any additional testimony, became so thoroughly convinced by the time he felt it necessary to defend his action that in his message to the Senate of December 19, 1906, he said:

"A blacker crime never stained the annals of the Army. It has been supplemented by another, only less black, in the shape of a successful conspiracy of silence for the purpose of shielding those who took part in the original conspiracy of murder."

At another point in that same message he said:

"Yet some of the non-commissioned officers and many of the men of the three companies in question have banded together in a conspiracy to protect the assassins and would-be assassins who have disgraced their uniforms by the conduct above related. Many of these non-commissioned officers and men must have known, and all of them may have known, circumstances which would have led to the conviction of those engaged in the murderous assault. They have stolidly, and as one man, broken their oaths of enlistment and refused to help discover the criminals."

A charge as to which, by the latest official report laid before the President, it was said there was no testimony whatever. Although diligently searched for, the inspecting officers of the Army had been unable to find any testimony.

In his message to the Senate of January 14, 1907, after the Purdy testimony had been taken and the President felt called upon to further defend his action, he said:

"The testimony of the witnesses and the position of the bullet holes show that fifteen or twenty of the negro troops gathered inside the fort and that the first shots fired into the town were fired from within the fort—some of them, at least, from the upper galleries of the barracks.

"It is out of the question that the fifteen or twenty men engaged in the assault could have gathered behind the wall of the fort, begun firing, some of them on the porches of the barracks, gone out into the town, fired in the neighborhood of 200 shots in the town, then returned—the total time occupied from the time of the first shots to the time of their return being somewhere in the neighborhood of ten minutes—without many of their comrades knowing what they had done.

"Indeed, the fuller details as established by the additional evidence taken since I first communicated with the Senate make it likely that there were very few, if any, of the soldiers dismissed who could have been ignorant of what occurred. It is well-nigh impossible that any of the non-commissioned officers who were at the barracks should not have known what occurred."

This so-called "Purdy testimony" was given by the citizens of Brownsville, and was largely but a repetition of the testimony given

previously, though not given under oath. It did not embrace any testimony of the soldiers, or of anybody, in regard to a withholding of knowledge by the soldiers, and there was no pretense on the part of any one that any evidence had been discovered since General Garlington's report to indicate, much less establish, a conspiracy of silence, and at that time he officially reported that he could find no evidence whatever of any conspiracy of silence.

But whether justified or not, the men were finally charged with—

1. The organization of a conspiracy to shoot up the town.
2. That the squad which did the shooting necessarily had a number of accessories both before and after the fact.
3. That the first shots were fired from the upper gallery of B barracks.
4. That other shots were fired from within the reservation.
5. That the raiders then jumped over the wall and committed the outrages mentioned, returned to quarters and joined their companies without the detection of any of them by their commissioned officers.
6. That of necessity such a conspiracy could not have been formed and executed without many, if not all, of the enlisted men, particularly the non-commissioned officers, having knowledge, which, if disclosed, would lead to the identity of the raiders, and that the refusal of the men to disclose such information was evidence of a conspiracy of silence to defeat the ends of justice.

EVIDENCE AGAINST THE SOLDIERS.

The testimony to support these charges consists of two classes—so-called "eyewitnesses," who testified to their personal observations, and circumstantial evidence, such as the finding of cartridges, exploded shells, and so forth, at the places where the firing was done.

We are told in the majority report that there were fifteen witnesses who saw the men who did the firing and recognized them as soldiers from the garrison. Most of these witnesses have testified four different times.

First, before the citizens' committee a day or two after the shooting occurred.

Second, before the grand jury of Cameron County, in which Brownsville is situated.

Third, before the Penrose court martial, and finally before the Senate Committee on Military Affairs.

Their testimony so given is sufficiently contradictory to show that it is unreliable.

But, aside from the contradictions, on account of the darkness of the night many things that were testified to by these witnesses could not have possibly been observed by them.

There were no artificial lights in the Cowen alley and no light of any kind in the reservation, except at the main gate, 120 feet distant from the mouth of Cowen alley.

In all the immediate neighborhood of the points where, according to all the witnesses the first shots were fired, whether inside or outside the reservation, it was as dark as a very dark night could make it.

These witnesses testified that hearing the firing they went to their windows, looked out into this darkness, and at a distance ranging all

the way from 30 up to 150 feet saw the firing party and recognized them as soldiers from the garrison by the color of their faces, by the uniforms they wore and the guns they carried.

It is unnecessary to go over this evidence in a detailed way, for, conceding for the sake of argument that the witnesses undertook to testify truthfully, the flimsy and unreliable character of the whole of it is fairly indicated by the testimony of the four principal so-called "eyewitnesses."

Without their testimony there is no credible evidence whatever to support the charge that the first shots were fired from the barracks or from any place within the reservation or that there was any jumping over the wall by anybody.

Without the testimony of these four witnesses the testimony of the officers and the men of the battalion that the shooting commenced at some point outside the reservation stands practically uncontradicted.

These witnesses were George W. Rendall and his wife, Jose Martinez and J. P. McDonel.

Rendall and his wife lived in the upper story of a building that stood on the corner of Elizabeth street and the Garrison road.

Their front windows looked out over the reservation. Rendall testified that he was awakened by the first shots that were fired; that he went to his window and looked out over the reservation to see what was occurring; that while he was looking to his right, in the direction of the barracks occupied by D Company, he heard a shot to his left which sounded as though it had been fired from some point in the reservation; that thereupon he turned his head to the left to look in the direction from which the sound came, and saw two other shots fired in succession; that they were fired from somewhere near the east end of B Company barracks, and that the piece from which these shots were fired, whether a gun or revolver, seemed to be pointed upward, for the shots seemed to be fired into the air. He then saw and heard men moving toward the wall at a point in front of the mouth of Cowen alley, and saw and heard them jump over the wall at that point.

On further examination and cross-examination the witness stated that he was 72 years of age; that he was totally blind in one eye; that he had been for a generation (laughter), and that his sight from the other had been so far impaired that he had been compelled to wear glasses for many years.

Before the Penrose court martial he testified that when he was awakened and got up and went to the window he put on his glasses and therewith saw what he narrated.

Before the Senate committee he said he desired to change that statement; that on reflection he had come to the conclusion that he did not wear his glasses while making the observations about which he testified, but he claimed that at night his sight was better without glasses than with them.

But passing by all these damaging features of his testimony and giving credence to what he says, the shots he saw fired were doubtless those fired by the sentinel, who testifies that after the first fusillade of shots he passed between B and C barracks to the front line, where,

facing toward the parade ground, he held his piece in the air and fired upward three shots in succession, calling out after each shot, "Corporal of the guard—number two." That was the kind of signal which under such circumstances he was required to give.

Rendall was in a situation to have seen other shots, if any had been fired. He did not see any others.

His testimony that he saw a body of men after these shots move toward the wall and heard them jump over into the Garrison road is simply incredible, because the uncontradicted testimony of all the witnesses is that the night was one of such unusual darkness that without the aid of artificial light it would have been impossible for a man with good eyes to have seen what he described at a distance of 150 feet, which was approximately the distance at which he claims to have witnessed this occurrence, or at 100 feet or at 50 feet or with any degree of certainty at even 20 feet.

But on this point Mr. Rendall is contradicted by the witness McDonel, who lived in that immediate neighborhood and who testified that when the first shots were fired he ran out on to the street and to a point only a few feet from the mouth of the Cowen alley, and that he saw the men who did the firing pass into the alley and saw them engaged in firing into Cowen's house one square away.

He says these men did not come from over the wall, but from Elizabeth street, and that he was in a situation to have seen them if they had come over the wall, and that nobody did cross the wall.

Jose Martinez claims that he was sitting in the front part of a room occupied by him at the corner of the alley and the Garrison road near where the firing commenced; that immediately—"instantaneously," to use his exact language—he put out his light and threw himself on the floor and remained there for probably thirty minutes, or even longer, until the firing had all ceased.

At one point in his testimony he claimed to have looked out at his back window, although his position on the floor made that impossible, and to have seen the raiders pass up the alley toward the Cowen house, and that he recognized them as soldiers, although he could not see their faces.

On all these points he flatly contradicted himself.

Mrs. Rendall saw nothing except some men passing through the reservation shortly after the firing commenced from the direction of D barracks toward the point in the reservation opposite the Cowen alley. She did not see them jump over the wall, nor hear them jump over the wall, nor pretend to see any firing within the reservation beyond a single flash which she could not locate. She did not even see the two shots about which her husband testified.

Other contradictory statements might be cited, but it is unnecessary to add to those already given. They are sufficient to show that these witnesses, on account of the darkness and the excitement, made only the most imperfect observation and were unable at the different times they testified to recall them with accuracy or in such a way as to clearly establish anything which they testified to, except only that somewhere in their locality the firing commenced by which they were aroused, and that almost immediately afterwards the call to arms was

sounded, the different companies were formed, and they saw bodies of men moving in different directions within the reservation, all of which, in a general way, is entirely consistent with what did in fact happen.

That the testimony of these so-called "eyewitnesses," aside from the many contradictions by themselves and by one another, was entirely unreliable is shown by the testimony of all the officers and the many other witnesses who testified as to the darkness of the night and the impossibility of recognizing individuals at any distance without the help of artificial light.

Major Penrose testified that he could not distinguish one of his white officers from one of the colored enlisted men at a distance from him of ten feet, and at that distance he could tell nothing about how any one was dressed.

Every other officer of the battalion testified to the same general effect—giving instances of inability to make personal recognition at the distance of from 5 to 10 feet.

In addition to this testimony there is in the record the testimony of a number of officers of other companies, based on actual experiments, that the flashes of the guns from firing of them would not make a light from which any one could be recognized and that it is utterly impossible without the aid of artificial light to tell anything about a firing party at any distance in the dark.

There were two or three witnesses who claimed to have seen the raiders by the aid of artificial light.

The chief of these was Paulino Preciado, the editor of a newspaper published in the Spanish language, called *El Porvenir*. His testimony on this point already before the committee was in flat contradiction of his testimony before the Cameron County grand jury and in flat contradiction of the statement he published in his paper immediately after the shooting.

Besides these contradictions, which were sufficient to cause Secretary Taft to discredit him, he had pending in the State Department at the time when he testified before the Senate Committee a claim against the United States Government for \$10,000 damages alleged to have been sustained by reason of a claim that he had been slightly wounded.

But he was further contradicted by the fact that one of the bullets fired into the saloon where he was passed through the window and lodged in a post in front of Crixell's saloon on the opposite side of the street, which was subsequently extracted and found to be not an army bullet with a metallic case, but a lead bullet of different composition from those which the soldiers were furnished with.

In the whole evidence from beginning to end there is not a particle of testimony from any so-called eyewitness that is not either contradicted by the witness himself or by some other witness or which is not shown by uncontradicted testimony as to the effect of darkness on the vision to have been unreliable if not impossible.

If Senators would know how difficult it is to recognize any one in the night-time they have only to stand on the sidewalk anywhere here in Washington at night and undertake to recognize some one passing

only so far distant from them as across the street. Unless they come under the rays of artificial light or in some other way are aided they will find it impossible to tell whether a man is white or black or anything about how he is dressed.

Since this testimony has been on my mind to such an extent, almost every night as I pass along the streets I find myself experimenting in this way, looking to see at a distance if I can recognize whether a man whom I see moving is a white man or a colored man or how he is dressed. I ask every Senator here to experiment in that way. It is no trouble. It is rather interesting, and when you have thus experimented for yourself you will be able to set aside all this so-called testimony of "eyewitnesses," for there is not one of them who was in a situation where he could tell anything at all that was reliable, and the cross-examination of every one of them disclosed that there was nothing reliable about the testimony that he gave in that particular.

CIRCUMSTANTIAL EVIDENCE.

The most damaging testimony against the soldiers, when taken without explanation, was the finding in the alleys and streets where the firing occurred of exploded shells, clips, cartridges, etc.

It was the production of these shells and clips and cartridges by Mayor Combe and his report to Major Penrose that they had been picked up in the streets at points where the firing occurred that caused Major Penrose and his officers to think that their men must have done the firing.

These exploded shells show by their stamp that they were manufactured by the Union Metallic Cartridge Company, that they were army shells, and that they were manufactured in the month of December, 1905.

The bullets cut out of the houses into which they were fired that night bear marks indicating that they might have been fired out of Springfield rifles, and upon analysis were found to have been the same kind of a bullet which the Union Metallic Cartridge Company was manufacturing in the month of December, 1905, and supplying to the Army.

But this testimony, in connection with other facts established, became testimony for the soldiers, instead of against them, as I shall undertake to show when I come to discuss this particular evidence as a part of the case made in favor of the men.

MOTIVE.

The case against the soldiers fails in another important particular. No adequate motive—in fact, no motive whatever—is shown for such an assault upon the town.

There is an attempt to show that they had a motive in the fact that they were debarred from drinking with the white people in the saloons of Brownsville; that one of their number—a man by the name of Newton—was brutally assaulted, knocked down with a revolver, and painfully injured without any sufficient justification or excuse, and that another soldier, by the name of Reed, when returning from Matamoros was pushed into the water by a customs officer on account of some trifling misbehavior.

The evidence shows that the soldiers frequented the saloons but very little, and that they never made any complaint to their officers or to anybody else on account of being debarred by some of the saloons of Brownsville from drinking at the same bar with white people.

On the contrary, the testimony shows positively that they did not make any such complaint.

Both Major Blocksom and General Garlington report that they did not hear any complaints on that account, and that the men, one and all, whom they interrogated, insisted that they did not harbor any resentment by reason of that fact.

The testimony further shows that a few of the saloons did not allow the soldiers to enter; that a few others provided separate bars for their accommodation; that quite a number of saloons, especially those kept by Mexicans, did not discriminate in any way, but gave to the soldiers the same accommodations they gave to the citizens.

The testimony shows that the Tillman saloon, where Frank Natus was the barkeeper, provided a separate bar and accommodated the soldiers in such a way that no one of them ever made the slightest objection on account of the treatment they received.

If the soldiers had shot up the town on account of discrimination against them by the saloons, it is reasonable to suppose they would have shot into saloons that did not allow them to enter, rather than into a saloon—for the Tillman saloon is the only one they did fire into—where they were provided with accommodations to which they had never taken any exception.

It would seem more reasonable to suppose that if the shooting of Natus had any reference to the treatment of the soldiers by the saloons, that he was killed by somebody who objected to the saloons accommodating the soldiers rather than by the soldiers who were accommodated. It seems to me that is a self-evident proposition.

But however that may be, there is no excuse for saying that the soldiers had, as a motive for shooting up the town, discrimination against them by the saloons, except only as it is deduced as a conclusion that because they were debarred from some of them they were angry and revengeful toward the whole town, and this deduction seems absurd, in view of the fact that although the town was well supplied with saloons, yet they spared all except only one where they had been given accommodations that were at least reasonably satisfactory.

As another evidence that the soldiers were seeking revenge, Major Blocksom reported that the house of the deputy customs officer, Starck, which was fired into, stood next door to the house occupied by the deputy customs officer, Tate, who assaulted Private Newton, and that it was doubtless fired into by mistake, the soldiers thinking they were firing into Tate's house instead of into Starck's house.

There is no testimony to justify such a conclusion except only the fact that the Major reasoned, or thought he did, that because Newton had been assaulted by Tate he and his companions desired to revenge Newton's wrongs by shooting into Tate's house in the hope they might kill him or some member of his family.

The fact did not interfere with the mental operations of the Major in reaching this conclusion that there was not one scintilla of testimony

to show that Newton or any other soldier of the battalion knew that Tate had a house, or on what street it stood, or at what point on any street it stood. Nor is there any testimony whatever to show that Newton knew who the man was who struck him except only as he was told subsequently by Captain Macklin, commander of his company, who undertook to investigate the matter, that he had learned that he had been knocked down by a United States customs officer by the name of Tate. There is no testimony to show that Captain Macklin, or anybody else connected with the battalion, had any knowledge whatever as to the location of Tate's residence or whether he had any residence.

But if the knocking down of Newton, with a revolver, by Tate was a sufficient motive to account for the shooting up of the town, and an attempt to shoot up the house of Tate, which was prevented only by a mistake of Starck's house for Tate's house, then there was an equally good and better founded reason for supposing that Starck's house was fired into not by soldiers, but by others who had a sufficient cause for firing into it, but who were sufficiently well acquainted with the location of Starck's house not to make any mistake in regard to it.

The testimony shows that Starck had during his service made more than 600 arrests of smugglers and other violators of the law and that some months before this shooting affray he had, in the discharge of his duty as a deputy customs officer, undertaken in the night-time to arrest a smuggler who was landing on the Texas side at a point near Brownsville.

The smuggler undertook to escape. Starck commanded him to halt, but he kept up his flight. Starck pursued him in the darkness until, coming close upon him, the smuggler turned to resist, when Starck knocked him down and severely injured him by striking him over the head with his revolver in practically the same way Newton was felled. When Starck took the man in custody he discovered that the smuggler was an inhabitant of Brownsville by the name of Avillo, whom he knew well, and who, Starck says, was well acquainted with his premises; that he had worked for him at his house. Starck says this man whom he thus arrested was taken before the commissioner, where he was bound over to await the action of the grand jury; that he forfeited his bond and was a fugitive from justice at the time when this shooting affray occurred.

It is far more reasonable to suppose that the men who shot into Starck's house were men who were avenging the supposed wrongs of Avillo, and possibly of themselves, rather than soldiers from the garrison trying, by shooting into Starck's house by mistake, to avenge the wrongs of Newton.

This is confirmed by the fact that Newton is shown by the testimony to have been on guard duty the night of the affray, and to have been off post and asleep in the guardhouse when the shooting commenced.

It is hardly probable that his companions would have gone out to shoot up the town on his account without him accompanying them or without him having knowledge of their action and purpose, and it is extremely improbable that while they were engaged in such a work, if he had knowledge thereof, he would have been calmly and soundly sleeping while they were thus avenging his wrongs.

So far as the trouble with Private Reid is concerned, it was of too trivial a character to merit any attention. Reid himself did not make complaint of his treatment when he reported the occurrence to his Captain, but, on the contrary, according to the testimony of Captain Macklin, laughingly remarked that he "got about what he deserved."

Moreover, the trouble with Reid occurred only the night before the affray. There was hardly time left after its occurrence for forming the "carefully preconcerted, well-planned conspiracy," to use the language of Major Penrose.

It may be safely concluded, therefore, that the trouble with Reid did not furnish any motive for what occurred.

DOMINGUEZ.

Neither is there any weight in the suggestion that the firing upon Dominguez, the lieutenant of police, shows a motive for the soldiers avenging themselves upon the peace officials of the municipality, for the testimony shows that during the entire time the soldiers were at Brownsville their conduct was exceptionally good; that there was but one arrest by the police, and that was for so trivial a matter that the soldier was released without any punishment.

There is no testimony whatever to show that the soldiers had been interfered with in the slightest degree by any of the police officials of the town.

On the contrary, the testimony of all the police officials is that there was no occasion for them to make any arrests or to interfere in any way with the soldiers, who appeared to have deported themselves with exceptionally good conduct.

It does appear, however, that Dominguez was an efficient officer of many years' service and very popular with the citizens of Brownsville, because of the faithful and efficient manner in which he had handled criminals in the discharge of his official duties.

It appears that during his long service he had made many arrests, and that in some instances he had found it necessary to resort to force in arresting and handling disorderly characters, and that in at least one instance he had found it necessary to take life.

If the suggestion is warranted that the raiders fired upon Dominguez for the purpose of avenging themselves upon him, it would seem far more natural and reasonable to suppose that he was fired upon by those who had cause, real or imaginary, for seeking revenge rather than by those who had no such cause. There is no word of testimony to show that any soldier of the battalion had ever so much as even heard of Dominguez, let alone that they had any cause to injure or molest him in any way.

In this connection there is much also in the testimony about a story being circulated among the people of Brownsville on the day of the assault that on the preceding evening a Mrs. Evans, who resided near the garrison, was assaulted by one of the soldiers, who seized her by the hair and threw her to the ground and then ran away.

THE MRS. EVANS STORY.

There is no sworn testimony in all the record to show that any such assault occurred, but an abundance of evidence to show that on account

of the circulation of this kind of a story there was great excitement among the people of Brownsville on Monday, August 13th, and that in consequence such an ugly spirit was manifested with respect to the soldiers that Mayor Combe felt it his duty to visit Major Penrose at the garrison about five o'clock that afternoon and warn him not to allow any of his soldiers to be in Brownsville that night, telling him in that connection if any of them should appear on the streets of Brownsville that night, he would not be responsible for their lives, or words to that effect.

In consequence, Major Penrose issued an order canceling all passes and requiring all his men to return to quarters by eight o'clock that evening and to remain in quarters during the night.

There is no testimony to show that any of the men knew why this order was issued, and no pretense of any testimony that any of the men resented it or expressed dissatisfaction on account of it in any way whatever.

The Evans incident, therefore, instead of furnishing a motive for the shooting up of the town by the soldiers, only furnishes a motive for shooting up the soldiers by the citizens.

That there was no motive appears from the further fact that all the soldiers who had any difficulty or trouble of any kind while in Brownsville belonged to C Company.

No one connected with either of the other companies had the slightest trouble of any nature.

The testimony, as I shall point out later, shows conclusively that C Company could not, in all probability, have participated in the shooting.

It is not likely that men from B and D Companies would have shot up the town for the purpose of avenging the wrongs of members of the other company; certainly not without members of C Company—those who were injured, or somebody in their behalf—joining in the raid.

It is from considerations and conclusions of the character named and suggested that it is impossible for me to find sufficient testimony in the record to warrant the finding that some of the men of the battalion "did the shooting."

And this is true, considering only that which may be called testimony against the soldiers.

TESTIMONY FOR THE SOLDIERS.

Coming now to the testimony in their favor, we have in the first place a presumption of innocence. This is not merely sentiment. It is an element of every case that possesses substance, and should have effect.

In the case of *Coffin v. The United States* (156 U. S., p. 454), Mr. Justice White, speaking for the Court, cited authorities tracing a recognition of this presumption from Deuteronomy to the latest law writer on the subject. He cited with approval the following language employed by Lord Gillies in McKinley's case, decided in 1817:

"I conceive that this presumption is to be found in every code of law which has reason and religion and humanity for a foundation. It is a maxim which ought to be inscribed in indelible characters in the heart of every jurymen; . . . to overturn this there must be legal evidence of guilt carrying home a degree of conviction short only of absolute certainty."

He further quotes with approval from Wills on Circumstantial Evidence, as follows:

"In the investigation and estimate of criminatory evidence there is an anticipated *prima facie* presumption in favor of the innocence of the party accused grounded in reason and justice not less than in humanity and recognized in the judicial practice of all civilized nations; which presumption must prevail until it be destroyed by such an overpowering amount of legal evidence of guilt as is calculated to produce the opposite belief."

Other authorities might be cited of the same general character without limit.

CHARACTER OF THE MEN.

In addition to this presumption there is in favor of the soldiers their character both as men and soldiers.

Not one of these three companies had a stain on its record. They were orderly, well behaved, well disciplined, and well drilled. They had never given their officers any trouble.

Such is the testimony of every officer, both of that regiment and of every other, who testified on the stand and who had knowledge of their character as soldiers and as men.

Major Penrose testified that they behaved themselves well before their discharge without honor and since then.

General Garlington testified that although the Government had every man under surveillance up to the time he testified, from the time of their discharge, not one has been found guilty of bad conduct, although turned out of the Army in disgrace.

General Andrew S. Burt, who commanded the regiment for ten years, testified that they were all worthy to be believed on their oaths. He said:

"I would believe them if I were sitting on a court martial and they were called in their own defense."

He gave them the highest character both as men and as soldiers.

Captain Macklin testified that they were peaceable, orderly, well behaved; that they drank much less than white soldiers; that there was very little trouble on pay day, and comparatively few arrests.

Captain Lyon testified in an equally complimentary way.

Victoriano Fernandez, policeman, testified that his beat was on Elizabeth street, the principal street of the town; that it led directly from the fort; that he saw the soldiers every day passing to and fro, and that in all the time they were there he never saw one of them drunk or disorderly, and that he had no occasion to make any arrests.

This good character and good conduct and good discipline should greatly strengthen the presumption of innocence in their favor, for it is not likely that men of such character would engage in such an affray as that which occurred at Brownsville; certainly not unless they had some positive and adequate motive of an unusual and exasperating character, and that, the evidence clearly shows, they did not have.

TESTIMONY OF SOLDIERS.

In the next place, there is the testimony of the soldiers themselves as to their innocence.

In one form or another these men have all expressed themselves under oath, and in no case is there any contradiction whatever in the testimony of any one of them upon any essential point.

Every man, in giving his testimony, spoke from his personal knowledge, for each one of them knew whether or not he participated in the affray, and each one of them knew where he was when the affray commenced, while it was in progress, and when it was ended; and, without exception, each man has given a clear, straightforward account of himself in these particulars.

The statements so made by these men are believed by their officers, who testified that, with few exceptions, they are truthful and to be believed.

These officers knew these men better than anybody else. They were in a better situation than anybody else to determine what credence should be attached to their statements. All these officers are satisfied that these statements of their men as to where they were and that their statements that they were not among the raiders are truthful.

To refuse to believe them is to assert, as said in the minority report:

"That as fine a body of soldiers and as truthful, according to all their officers, as can be found in the entire Army are conspirators, murderers and perjurers, and all this upon the uncertain, unreliable and contradictory statements of witnesses who did not pretend to give personal knowledge, but only conclusions based upon what was necessarily uncertain observations."

But these soldiers are confirmed, not only by the circumstances and probabilities, but also by facts of the weightiest character.

Within a few minutes after the firing commenced the sentinel on guard gave the alarm required to be given under such circumstances by firing his piece in the air three times and calling out after each shot for the corporal of the guard.

Major Penrose, who had retired, but was yet awake, immediately ordered the sergeant of the guard to sound the call to arms. This call to arms and the firing instantly awakened the whole garrison. Excitement and more or less confusion followed. The formation of the companies was ordered. The sergeant in charge of the gun racks of Company C refused to open them until he had an order from a superior officer.

This led, after some minutes of delay, to an order from Major Penrose to break open the gun racks.

On account of this delay C Company was not formed until some minutes after the firing had ceased, but the other companies were formed immediately after the call to arms was sounded.

The roll was called in B Company. It was still in progress, but almost concluded, when the firing ceased. Every man of the company was present or accounted for.

D Company was quickly formed, and the men were verified by a personal inspection by Captain Lyon. Not a man was missing from the ranks who was not accounted for.

The officers of these companies testified that while such a thing was possible as that some of the men might have participated in the shooting and then returned and joined their companies without detection, yet

they do not believe that any such thing occurred, or that it could have occurred without the men being detected.

Later that night, after Mayor Combe notified Major Penrose that the men were charged with doing the shooting, the men were again verified, and every man was satisfactorily accounted for.

The following morning, as soon as it was light enough to see and to make an inspection, the guns were carefully inspected and the ammunition was verified, with the result that not a cartridge was missing and not a dirty gun was found. Every one was as bright and clean as it had been found two days before at their regular weekly inspection.

There is much testimony in the record as to whether or not in the night-time, and without artificial light, the men could have cleaned their guns if they had used them on the raid so as to have them free from any indication of use.

The overwhelming weight of this testimony is that it is a difficult matter to clean these rifles; that it requires from fifteen to thirty minutes to clean them, and that it is absolutely impossible to clean them in the dark, or with the aid of artificial light, so they would pass such an inspection as they were subjected to by the officers of these companies the following morning.

This testimony as to the cleaning of these guns and the time required therefor was given not alone by the colored soldiers of the Twenty-fifth United States Infantry, but also by a large number of white soldiers who were called as witnesses.

It has been suggested that the men probably used surplus ammunition, but the testimony is uncontradicted that they had no surplus ammunition. All the ammunition in the possession of the men when they left Fort Niobrara was taken away from them, except only twenty rounds of ball cartridges for each man, and every man in the battalion had his twenty rounds when inspected the morning after the affray, and all the surplus ammunition with which each company was charged was found to be on hand in the storerooms in charge of the quartermaster-sergeants of the respective companies without the shortage of a single cartridge.

That is not the testimony of the black soldiers, but of the white officers, men who were graduates of West Point Military Academy, and men who stand as high in point of integrity as any men who could be called as witnesses.

The testimony further shows they had no opportunity to get surplus ammunition either at Fort Niobrara or at Fort Brown.

The testimony further shows that during the stay at Fort Brown the three companies of white soldiers of the Twenty-sixth United States Infantry were engaged in target practice and that generous supplies of their ammunition in some manner found its way into the hands of citizens of Brownsville. There is testimony to the effect that whole clips of Springfield cartridges could be seen in barrooms, standing on sideboards, where they were used for decorative purposes, and that when these companies of the Twenty-sixth United States Infantry left Brownsville they carelessly left ammunition behind them in the barracks, which was gathered up immediately after their departure by Mexicans and scavengers who visited the barracks for the purpose of supplying themselves with whatever had been cast away.

I have here a clip (exhibiting). It is a facility for putting five cartridges together in a bunch. It is that little fastener or holder that is called the clip. I call attention to it now because I shall have to refer to it again presently.

In other words, the testimony shows that the citizens of Brownsville had opportunity to procure, and that they did have in their possession, an abundance of the kind of ammunition with which the soldiers had been supplied, and that the colored soldiers had no ammunition whatever and no opportunity to procure any except only that which had been distributed to them, every cartridge of which they had when inspected the morning after the shooting occurred.

The foregoing statements as to the ammunition should be modified as to C Company.

Each man of this company carried with him to Brownsville from Fort Niobrara twenty rounds of ball cartridges, but a few days after arrival at Brownsville Captain Macklin ordered that all the ball ammunition should be returned to the quartermaster-sergeant, and that the men should be supplied with guard cartridges, ten rounds to each man.

According to the testimony, when the shooting commenced, on the night of August 18th, each man in this company had ten rounds of these cartridges, and not a man in this company had possession of a single ball cartridge. Every one had been taken from them only a few days before under this special order.

The testimony further shows that each of these companies had 650 rounds of guard cartridges—no more, no less.

This ammunition was issued to them at Fort Niobrara. These cartridges are, as their name indicates, intended only for guard purposes. They have only fifteen grains of powder, whereas the ball ammunition has forty-two grains of powder. They have a plain lead bullet, without any steel jacket such as the ball ammunition has.

The testimony further shows that, except only these 650 rounds for each of these three companies, there was no other ammunition of this kind issued to the battalion or procurable by the battalion at either Fort Niobrara or Fort Brown.

The testimony further shows that each of these three companies the morning after the firing not only accounted for every round of ball ammunition, but also for every round of this guard ammunition.

Each of the companies turned over to the Government at El Reno, where the soldiers were discharged without honor, exactly 650 rounds, except only D Company, which turned in only 645 rounds.

This shortage of one clip of guard ammunition was fully accounted for by Captain Lyon, the commanding officer of Company D.

No one pretends that there is any evidence that any bullets of this character were used that night. No trace of any such bullet has been found.

It follows necessarily that, so far at least as Company C is concerned, there is absolutely no evidence to show that they participated in the affray or to warrant the suspicion that they did, and yet it was this company toward which all suspicions of guilt were directed by Major Blocksom and all others down to the time when this fact with respect to its ammunition was established.

Suspicion was directed to this company because, Newton, Reid and Adair, the three men, each of whom had some kind of trouble at Brownsville, all belonged to this company, and because there was delay in the opening of the gun racks, in consequence of which at least two of them were broken open by order of Major Penrose.

Major Blocksom and others engaged in the investigation seemed to think that it was an evidence that these men were engaged in this conspiracy, which because of their care in organizing and executing it seems impossible to disclose, were, while so expert on the one hand, so absolutely stupid on the other that they would commence their operations by breaking open their gun racks and committing other acts that would betray their identity.

How anybody possessed of the slightest power to reason could find evidence of guilt in such performances surpasses ordinary comprehension. Only a man so blinded with prejudice and egotism as to be incapable of weighing conduct intelligently could be guilty of reaching conclusions so utterly absurd.

The testimony shows another important fact that is confirmatory of the innocence of the soldiers.

PISTOL SHOTS.

Ten revolvers for each company had been issued to the battalion at Fort Niobrara. There were no other revolvers or pistols of any kind, as far as the testimony discloses, in the possession of anybody connected with the battalion.

The testimony shows that none of these revolvers had ever been taken out of the chests in which they were when they were delivered to the different companies, except only one that was in the possession of one of the officers of the battalion.

All these revolvers, with this exception, were found after the firing to be in the chests where they belonged covered with cosmoline that had been put on them at the arsenal, and not one of them showing any signs of having ever been used.

The significance of this testimony arises from the fact that Major Penrose and his officers and also Mayor Combe and a number of other witnesses all testified positively that the first shots fired that night were pistol shots.

Major Penrose and his officers and Mayor Combe were experts in the handling of arms and in distinguishing between pistols and high-power rifles.

Major Penrose said:

The first two shots I heard were undoubtedly pistol shots.

Captain Lyon says:

The first two shots were undoubtedly revolver shots, black powder.

Lieutenant Grier:

They were what I thought were two pistol shots.

George W. Rendall said, referring to these shots:

I think they were pistols; that was my impression at the time.

Mayor Combe said he first heard "what I thought to be four or five pistol shots."

He further said that he was impressed that they were pistol shots because they did not sound like the shots he heard later, which he recognized as high-power rifle shots.

In view of this testimony, it can not well be doubted that the firing was commenced that night by somebody other than the soldiers.

LOCATION OF FIRST SHOTS.

That this firing did not commence on the rear porches of the barracks or at any other point within the reservation is clearly shown by two witnesses who were in position to know, and unquestionably did know, more about the location of the first firing than anybody else.

One of these was Private J. H. Howard, of Company D, the sentinel who was on post and who happened, when the firing commenced, to be passing over his beat immediately in rear of C and B barracks, about opposite the space between them, and practically opposite the mouth of Cowen alley.

The other witness was Matias G. Tamayo, a Mexican citizen of Brownsville, who was employed by the Government as the scavenger, and was with his night cart immediately in the rear of B barracks, near its kitchen, when the firing commenced.

Both testified in the most unqualified way that there was no firing from the barracks or from any other point within the reservation; that the first shots were fired from some place outside of the reservation, as nearly as they could locate them in the Garrison road, somewhere in the vicinity of the mouth of Cowen alley.

Both witnesses were exhaustively examined and cross-examined without shaking or affecting their testimony on this point in the slightest degree.

Both testified not only that there was no firing from any point within the reservation, but that no men or bodies of men were passing in the rear of the barracks before or at the time of this first firing, and that nobody was seen to be jumping over the wall from the reservation into the Garrison road outside, and both testified that if any such thing had happened they were in a situation to have seen it.

They describe intelligently and positively the character of this first firing and the location of it, and negative, absolutely and unqualifiedly, the claim that there was any firing from any other point except that which followed the first firing, and which occurred as the raiders passed up Cowen alley on the route they took.

The sentinel testifies that there were first two shots, and then after a few seconds a fusillade of five or six shots, and that thereupon he passed to the front line of the barracks opposite the parade ground, held his piece in the air and gave the alarm required under such circumstances by firing his piece three times and after each shot crying out, "Corporal of the guard No. 2." His gun was the only one in the battalion found dirty from firing on inspection the following morning.

Major Penrose and a number of other witnesses testified that they heard first two shots, then a fusillade of shots, then three separate and distinct shots, which were undoubtedly the shots fired by the sentinel, whom Major Penrose found at the point where the sentinel testifies he stood when he gave the alarm.

There is nothing whatever in the record of the sentinel, Howard, to his discredit. His testimony is intelligent, frank, straightforward, and undoubtedly truthful, but while it may be insisted that because he was a soldier his statements should be discredited, there is no reason whatever for discrediting the testimony of Tamayo, the scavenger. He was a citizen of Brownsville; he had lived there all his life. Owing to the fact that they had been there so short a time he had practically no acquaintance with the soldiers. He testified that he had no interest in them of any kind whatever to affect his testimony either one way or another. His testimony was also intelligent, frank and straightforward, and although he was examined and cross-examined in the most rigid and exhaustive manner, his evidence was not affected or disparaged in the slightest degree.

I come now to the

CIRCUMSTANTIAL EVIDENCE.

It consists of a number of bullets that were cut out of the houses into which they were fired at the time of the affray, and a lot of exploded shells, some clips and cartridges, and a bandolier that were picked up in the alleys and streets of Brownsville the next morning after the shooting.

All these are the same as those with which the negro soldiers were supplied. They are also precisely the same, however, with which the white soldiers were supplied who were relieved from duty at Fort Brown by the colored soldiers. The bullets have upon them the mark of four lands, indicating, as the testimony shows, that they were fired from either a Springfield rifle, or a Krag rifle, or a Krag carbine, or a Mauser rifle.

It is claimed, however, that they must have been fired from a Springfield rifle.

First, because the Springfield cartridge is too long and too large to fit into a Krag rifle, or Krag carbine, or a Mauser rifle, and that if the bullets that were found belonged to Springfield rifles, and that inasmuch as no one at Brownsville, so far as the testimony discloses, had a Springfield rifle, except only the negro soldiers, they must have done the firing.

Until this circumstantial evidence was presented to Major Penrose and his officers, they would not believe that any of their men had been engaged in the shooting; but this testimony seemed so conclusive that they changed their minds and expressed themselves as convinced that their men must have done the shooting.

It was this apparently conclusive testimony that fastened the conviction of guilt upon the soldiers in the minds of all who were engaged in the investigation of the affray, and which led the investigators to disbelieve the soldiers and to desist from investigating the question of the possible guilt of others.

As soon as this evidence was presented to Major Penrose and his officers they put their men under the strictest scrutiny and subjected them to the severest discipline and examinations, with a view to ascertaining who the guilty men were. They continued this course not only at Fort Brown, but subsequently at El Reno, down to the time when

their men were discharged without honor, but, notwithstanding they made every kind of an effort, they failed to get any clue whatever to indicate what men, if any at all, were guilty.

Every man in the command continued to stoutly and unqualifiedly deny that he had participated in the affray, and also that he had any knowledge whatever as to who had done the shooting.

When General Garlington announced the President's ultimatum, that unless some one disclosed who the guilty parties were the whole battalion would be discharged without honor, it was thought that at least those oldest in the service, and therefore having the most to lose by such a discharge, would come forward with incriminating testimony; but when they continued to assert their innocence and lack of any knowledge whatever on the subject, their officers, who knew their pride in their record as soldiers and knew their trustworthiness and truthfulness and general reliability as men, began to doubt their guilt.

This wavering ripened into conviction when during the progress of the Penrose court martial and the Senate investigation a number of important facts favorable to the soldiers were developed and established.

THE MICROSCOPIC INSPECTION.

No one fact had so much weight with these officers to change their minds as what is known in this record as the microscopic inspection that was made of the exploded shells above referred to.

When the results of this investigation were communicated to the Senate Committee on Military Affairs, made a part of the record of the investigation, and made known to the public, these officers carefully studied the various points and features and phases of the same with the result that, coupled with other testimony, they became thoroughly convinced that their men were absolutely innocent, one and all, of any participation in the shooting affray, and of withholding any information with regard thereto.

All testified fully as to this change of opinion in favor of their men, giving their reasons therefor.

This testimony, which was so conclusive to these officers, appears equally conclusive to my mind.

It is of the most important character and, in consequence, is entitled to the most careful attention.

My views with respect to this circumstantial evidence and this microscopic inspection and the conclusions deducible from the results of the same are fully and carefully expressed in the supplemental minority report signed by the Senator from Connecticut and myself.

I do not know how better to present what I have to say in regard thereto than by quoting the following from that report. It involves some repetition, but in view of its importance that is not objectionable.

THE SHELLS, CLIPS, ETC.

"A lot of exploded cartridge shells, some clips and cartridges, and a bandolier were picked up in the alleys and streets of Brownsville the next morning after the shooting.

"Until these were brought to the fort and shown to Major Penrose and the other officers of the battalion they would not, any of

them, believe it possible that any of the men of the battalion had been engaged in the shooting; but when these were exhibited to them, and they were told that they were picked up at the points where the shooting occurred, they changed their minds and concluded that in view of such evidence their men must have done the shooting. From that moment they put their men under the strictest scrutiny and surveillance and made every effort possible to ascertain who the guilty men were, but all such efforts failed.

"In the meanwhile the court-martial of Major Penrose was held at San Antonio and the investigation before the Senate committee commenced. The testimony so taken satisfied the officers, as we have already pointed out, that their men were not guilty, and they have so testified.

"They testify that they were influenced to change their opinions and reach the conclusion that their men were not guilty by a number of facts developed, including, among others, the results of a microscopic examination that was made of the exploded shells that were picked up in the streets of Brownsville. In other words, the testimony by which they had been first led to believe that their men were guilty turned out, as a result of this investigation, to be conclusive proof to their minds that their men were not guilty. The part this testimony has thus played shows that it is sufficiently important to receive special consideration.

NUMBER OF SHELLS FOUND.

"1. According to the weight of the testimony there were from 150 to 300 shots fired that night in Brownsville by the raiders, whoever they may have been. There should have been found, therefore, that many exploded shells. The testimony shows that careful search was made to find the shells and every other species of evidence that might tend to show that the soldiers were guilty, but with the result that, all told, only about 40 of these exploded shells were found. In other words, there were from 100 to 200 or 300 exploded shells, according to the theory of those who claim that the soldiers did the firing, scattered somewhere as a result of that firing in the alleys and the streets of Brownsville which have never been found. Nobody pretends that there was any difficulty on account of the nature of the ground or for any other reason about finding any exploded shells there may have been, or ought to have been, in the streets where the firing occurred. Seven of these empty shells were found at the mouth of the Cowen alley near the fort by Captain Macklin. Others were found in the alley and in Washington street at the point where the firing is said to have occurred. These shells so found, except those found by Captain Macklin, were turned over to the authorities and subsequently forwarded to the Senate for use as evidence. There were only 33 of them in all. There may possibly have been a few others picked up that were not turned over, but we have no account of them, and the testimony is of such character as to warrant the conclusion that there could have been but very few, if any, picked up in addition to the 33 mentioned. It is reasonable to conclude

that the other shells that must have been exploded, if there were as many shots fired as the witnesses state, were not found to be such shells as the soldiers used, or there must have been some other good reason for not submitting them as evidence. Whatever the explanation may be, the fact remains, and it is a fact that in and of itself discredits the deductions drawn to the prejudices of the soldiers from the finding of the shells that have been submitted.

SHELLS AND CLIPS FOUND BY CAPTAIN MACKLIN.

"It is testified by Captain Macklin, who was the officer of the day, that just at the break of dawn he made a careful search for any evidence that would show who had done the firing. In this behalf he searched, both inside the reservation wall and outside, to find shells and clips or other evidence that the soldiers had done the firing, as the citizens were at that time charging. He found no shell, no clip, no evidence of any kind inside the reservation wall, but outside the wall, across the street, in front of the garrison and at the mouth of Cowen alley, where, according to the testimony of the guard and the scavenger and other witnesses, the first shots were heard, he found seven shells and six clips in a circular area not more than 10 inches in diameter. The testimony is conclusive that if these shells had fallen from Springfield rifles as they were fired they would have been scattered over an area perhaps 10 feet in diameter. It is the opinion of all the witnesses who testified on that point that the shells found by Captain Macklin could not have fallen in the position in which he found them if they had fallen as they were fired. This fact, coupled with the further fact that with these seven shells there were found six clips, enough to hold thirty cartridges, further discredits the finding of the shells in the alleys and streets as evidence of the guilt of the soldiers.

MICROSCOPIC INVESTIGATION.

"But while the investigation was in progress the War Department, on its own motion, caused all the rifles that were in the hands of the three companies at Brownsville that night to be forwarded to the Springfield Armory, and detailed two officers, who, under instructions from the War Department, caused to be fired out of each of these rifles two cartridges. The indentations on the heads of the exploded shells so fired were put under the microscope and compared with the indentations found on the heads of the thirty-three exploded shells picked up in the streets of Brownsville, which indentations were similarly magnified."

In order that Senators may have a better idea than I can convey by mere language, I have in my hand here an exploded shell to which I call attention. That is the head of the shell—where I am pointing. The center of that head is called the "primer." When the cartridge is inserted in the gun and the trigger is pulled a bolt shoots forward which carries what is called the "firing pin" until it strikes the primer, and that explodes the shell.

As I have already said, two cartridges were fired from each one of the guns of this battalion by the officers who were intrusted with the duty of making the experiment, and the indentations made upon the heads of the shells were then magnified, and you see by these exhibits in our record at pages 1313-1314 to what extent they were magnified. [Indicating.]

All firing pins are made by machinery and are supposed to be practically alike, yet it is found upon examination that no two firing pins will make exactly the same kind of an indentation; that is, there does not seem to be anything in either manufacture or nature exactly like anything else, even when it is made by machinery.

All the heads of these exploded shells fired by these experts were put under the magnifying glass and magnified in that way. So were the heads of the shells picked up in the streets of Brownsville put under the magnifying glass, and then they were compared with each other with this result, that the indentations found on the thirty-three shells picked up in the streets of Brownsville were exactly like the indentations made upon the shells fired by these experts out of four certain rifles that had been sent to the Springfield Armory, which were found to have belonged to Company B.

All that is set forth in the official report of these experts. The experts transmitted them to the Secretary of War, with a report in which they said that the experiments showed conclusively that the thirty-three shells picked up in the streets of Brownsville had been fired out of these four certain rifles—eleven out of one, eight out of another, and so on. The numbers of the rifles were given, and that was transmitted to the committee as settling the whole matter.

But I was simple-minded enough when that came in to think I would like to know where those four rifles were that night, if I could find out. So I found out, from an examination of the property account of the company, that they were charged to four different soldiers, whose names were given. They were subpoenaed and brought before the committee, and they testified, and three of the rifles were accounted for as in the hands of men that night, not one of them showing any evidence of having been fired when examined the next morning.

But it was said by those who were disposed to criticize and not accept that as conclusive that these soldiers were interested and there might be unreliable testimony given. But it was not necessary to pursue that any further, for when we came to examine as to the fourth gun we found that gun was that night locked up in the arms chest of the storeroom of the company's quarters. I have told all this in the report, and I would rather read that.

Mr. Scott: And that gun had never been used.

Mr. Foraker: No. I want to read that, and I want the attention of every Senator who will so honor me.

"The thirty-three exploded shells were otherwise subjected to the most careful inspection by these experts. The result of this investigation was submitted to the committee in the form of an official report made by these officers to the Secretary of War. It is found at pages 1309-1325 of the record. Without being unduly tedious, the results were:

"1. That there was such an exact identity between the indentations found on the heads of the thirty-three exploded shells picked up in the streets of Brownsville and the indentations found upon the exploded shells fired from four certain guns belonging to Company B of the Twenty-fifth Infantry that the officers reported that, beyond a reasonable doubt, the shells picked up in the streets of Brownsville had been fired out of those four guns.

"2. The experts further reported that they found that three of the shells picked up in the streets of Brownsville had a double indentation, as though a first attempt to fire them had failed and they had then been put a second time in the piece and struck a second time with the hammer or firing pin before they were exploded.

"3. They further officially reported that certain of the shells picked up in the streets of Brownsville, nine in number, bore marks indicating that they had been twice or oftener inserted in a rifle as though to be fired.

DOUBLE INDENTATIONS.

"The officers of the Twenty-fifth Infantry and all the men who were examined on the point testified that when they first received their rifles, about the last of April, 1906, at Fort Niobrara, they were found to be so heavily oiled with cosmoline that the spring which shot the bolt forward with the firing pin to strike the head of the cartridge and explode it was impeded to such an extent that it was a matter of frequent occurrence that cartridges failed to explode at the first stroke, but that after, by the use of coal oil and in other ways, this cosmoline had been entirely removed, so that the spring worked freely, such a thing as a failure to explode practically never happened; and all testified that long before these troops left Fort Niobrara, where they used their rifles in target practice, they ceased to have any such difficulty and that during all the time they were in Brownsville no such difficulty could have been experienced if they had had occasion to use their rifles.

THE DOUBLE INSERTION.

"As to the double insertion of cartridges, the officers and men all testified that while they were engaged in target practice at Fort Niobrara the call to cease firing very frequently was sounded after a cartridge had been inserted but before it was fired; that this was a matter of practically daily occurrence.

I should have said "hourly occurrence"—

that always the soldier was required when the call to cease firing was sounded to at once remove from his gun any cartridge that might have been inserted but not yet fired, and that this cartridge so withdrawn was reinserted and fired when firing was resumed, and that in this way shells would show marks indicating that they had been inserted more than once in the firing piece. The officers and men all testified that except only on the target range at Fort

Niobrara there was never in the history of these arms any such double insertion of cartridges or any occasion for such double insertion. It was the opinion of all the officers and men who testified on the subject that these double insertions never could have occurred except only on the target range at Fort Niobrara.

"What these officers say shows how improbable it is that such a double insertion could have occurred in connection with the shooting affray at Brownsville, when it is remembered that when an attempt is made to fire a cartridge and the attempt fails the bolt must be drawn backward, with the result that the ejector throws the cartridge out of the chamber and to the distance of anywhere from 3 to 10 feet away from the gun. The idea that a raider would undertake in the darkness of such a night, and under such circumstances, to recover an ejected cartridge that had failed to explode in order that it might be reinserted in the piece is utterly untenable. The same is equally true as to those cartridges showing double indentations. There could not be any double indentations without pulling back the bolt after the first indentation, with the consequent expulsion of the cartridge from the chamber out into the darkness and to the distance of 3 to 10 feet away from the gun, then recovering and reinserting the cartridge. To suppose that on such an occasion, under such circumstances, any such thing would or could occur is an extreme improbability, if not an actual impossibility.

THE FOUR GUNS.

"The four guns out of which the experts found that the shells picked up in Brownsville must have been fired were identified by their numbers. The testimony shows that on the night of the shooting three of these guns were assigned, respectively, to Thomas Taylor, Joseph L. Wilson, and Ernest English, privates of Company B. These men appeared and testified that they were in their quarters asleep when the firing commenced, that they heard the call to arms, rushed with their comrades to the gun rack, each getting some gun which he carried for that night and which he returned after the company was dismissed for the night to the gun racks, where they were locked up and kept until morning; that the following morning each one found his gun in the rack and that when submitted for inspection it was found to be perfectly clean and bright, showing no evidence whatever of having been fired during the night. All testify that in the excitement and confusion each soldier grabbed the first gun he could get, but that all guns were found in the racks, where they were verified after the firing was over. These witnesses were clear, straightforward, and unqualified in all their statements, and their testimony should be sufficient, in the absence of specific contradiction, to establish the fact that no one of their guns was used in the shooting affray.

"They are confirmed by the testimony of their company commander, Lieutenant Lawrason.

THE FOURTH GUN.

"But however it may be as to the testimony of these three men being sufficient to show that these three guns were not fired that night, the *testimony is absolutely conclusive as to the fourth gun that it was not fired that night.* This fourth gun, being 45683, was originally issued at Fort Niobrara to Sergeant Blaney. Shortly before the battalion left Fort Niobrara for Brownsville his term of enlistment expired, and he re-enlisted and took the usual furlough of three months, to which he was entitled. Before starting on his furlough he turned in his gun to the quartermaster-sergeant, Walker McCurdy, who placed his name on a piece of paper and put it in the bore of the gun next to the chamber, and then placed it in the arm chest and locked it up. Sergeant Blaney did not return to the company until after it left Fort Brown. On the night of the shooting his gun, with others, was still in this arm chest. They were all placed there when the battalion left Fort Niobrara. On arrival at Fort Brown this arm chest was put in the storeroom, and for want of room other baggage was piled on top of the chest. On the night of the firing, and immediately after the company was dismissed for the night, Lieutenant Lawrason, the company commander, under orders from Major Penrose, proceeded to verify his rifles. He carefully counted the rifles in the gun racks and found there the exact number that belonged in the racks. He then went to the storeroom, taking with him the quartermaster-sergeant who unlocked the room, that he might enter. After entering the room he told the quartermaster-sergeant that he wanted to verify the guns in his custody—those in the arm chest. The quartermaster-sergeant thereupon removed the baggage that had been piled on top of the arm chest, unscrewed the lids, opened up the guns, and Lieutenant Lawrason counted them, finding that every gun was there—not one missing. In this way he establishes that Blaney's gun was at the time of the firing in the arm chest, with the lid screwed down and baggage on top of the chest, and the door of the storeroom fastened under lock and key. In other words, it is conclusively shown that as to this one gun at least it was utterly impossible for it to have been fired in Brownsville or that it ever had been fired, except only on the target range at Fort Niobrara before the battalion left there.

"If this gun was not fired that night in Brownsville, as the testimony conclusively shows it was not, then it follows that if the shells picked up in the streets of Brownsville were fired out of this gun they must have been fired at Fort Niobrara. The testimony shows this was both possible and probable.

"Before this microscopic investigation was made or any such question was foreseen, it was established by uncontradicted testimony that Company B took with it to Brownsville as a part of its baggage a box containing from 1,600 to 2,000 exploded shells, with a proportionate number of clips, and that after arrival at Brownsville this box, opened, stood on the back porch of B barracks, where anyone passing might have access to it and remove shells

and clips from it. The microscopic report says that the shells picked up in the streets of Brownsville and put in evidence were beyond a reasonable doubt, fired out of these four guns belonging to B Company. If so, then it also follows that they were fired, not in Brownsville, but at Fort Niobrara, and that they were found in the streets, not because they fell there when fired, but because they had been placed there by persons unknown, who had secured them from this box of shells standing on the back porch and easily accessible to anyone disposed to remove them therefrom. In other words, the microscopic inspection shows conclusively, not that the soldiers were guilty of the firing, but that the soldiers were free from such guilt.

Before I leave that subject let me again call attention to the fact that the next morning about the break of day, as he testified, Captain Macklin, who was the officer of the day, made a very careful search, having heard that the charge was that the soldiers had done the firing, both inside the reservation and outside, to find any evidence of such firing. Inside the reservation he could find no shell, no clip, no evidence of any kind to show that any firing had occurred. Outside the reservation, in the mouth of Cowen alley, where the sentinel and the scavenger testified that the first firing occurred, he found on a circular area, not more than 10 inches in diameter—think how small that is now—seven exploded shells and six of these clips. The testimony is that if those exploded shells had been fired that night by one standing near that point, they would have been ejected a distance anywhere from 3 to 10 feet from the gun, and they would have covered an area of 10 feet in diameter, rather than 10 inches in diameter. In other words, that, in connection with what is otherwise shown with respect to these exploded shells picked up in the streets of Brownsville, indicates that they had been placed there not as a result of firing done by soldiers, but as a result of firing done by somebody else who wanted to fix the responsibility for firing upon the soldiers.

Still other facts are developed and established by the testimony that might be cited as confirmatory of the innocence of the soldiers, but it is not necessary for present purposes to prolong the discussion of that character of evidence.

I want to pass to a consideration of the legislation that has been proposed, but before taking that up I desire to call attention to the

PROBABILITIES

of this case, or rather its improbabilities.

To any mind at all familiar with human nature, and able to reason as to the probabilities of human action, there is testimony of the strongest character in favor of the soldiers in the striking improbability of the whole theory of their guilt.

Is it probable that men of the character the testimony shows these men to be would deliberately plan such a conspiracy? And if they had ability enough to plan and execute such a conspiracy, would they be stupid enough to enter upon its execution by breaking open their gun racks, as they did in Company C, and by firing from their rear porches as it is charged they did in Company B, or that they would be firing from within

the reservation grounds, on which they would remain until by such firing and such operations they had aroused the whole town, and directed attention to themselves, thereby fixing their identity as soldiers; and that when they had thus fixed attention upon themselves and not before, they would, in the presence of the aroused citizens, jump over the wall of the reservation and start on their errand of outrage and murder?

Is it reasonable to suppose that if the raiders were soldiers they would have commenced firing anywhere in the vicinity of the reservation? It must be remembered that it is the theory of those who believe in their guilt that operations were commenced in this bungling manner and that yet their proceedings were so carefully planned that, although they had accessories before the fact to enable them to secure their guns and pass the guards and accessories after the fact to enable them to return, clean their guns, and otherwise deceive their officers, yet all concerned—the President thinks the great majority of the battalion—have so carefully guarded the secret that no one has allowed a single word or hint to escape that even tends to convict. Such secrecy would be utterly impossible; but it is, if it were possible, utterly inconsistent with the performances with which their proceedings were initiated. The two ideas are utterly at variance with each other—at war with each other—they destroy each other.

And if the soldiers were so reckless as to disclose their identity as soldiers by breaking open their gun racks and opening fire in the way indicated and at the places indicated, why should there have been maintained such secrecy with respect to themselves and their operations in other respects?

Is it reasonable to suppose—can any fair-minded man believe—that men capable of planning and executing such a conspiracy and willingly engaging in such a work would be so secretive on the one hand and so absolutely reckless on the other?

And is it reasonable to suppose that if there were from five or six or eight to twenty soldiers engaged in the raid they could have gone through the town to the extent described by the testimony, and in the manner shown by the testimony, and then from a point distant 300 to 350 yards from the fort have returned to the barracks and rejoined their companies while in the process of formation, under the very eyes of their officers, without being detected?

In order to have returned to their companies before their formation was completed they would have had to run swiftly and would, therefore, have been likely to show excitement, quick breathing, and other effects of their exertion, which would be observed.

The testimony of all the officers is unqualified that not a man in any one of the companies showed any sign whatever of having participated in the affray.

I closed with a discussion of two bills, one introduced by Senator Warner of Missouri, and the other by myself, providing for the re-enlistment of the men. My bill provided that they should be re-enlisted on formal application, sup-

ported by an affidavit of innocence of all charges. Senator Warner's bill provided they should be allowed to re-enlist only on the presentation of *proof of innocence satisfactory to the President*. I said:

It is now more than eighteen months since this shooting occurred. It is almost a year and a half since the men were discharged and became separated from each other.

They have been during all this period under surveillance and practically on trial.

Numerous investigations have been had. One by the grand jury of Cameron County, Tex., another by the Penrose court-martial, another by the Macklin court-martial, and another by the Senate Committee on Military Affairs.

Nearly all of these men have in some connection or in some form or other testified as witnesses at least once, and all these regarded as most likely to have knowledge as often as two, three, or four times. They have been examined and cross-examined, but during all this period, and notwithstanding all these trials to which they have been subjected, not one iota of testimony has been adduced anywhere by anybody of any kind whatsoever to point to any particular one of the men as guilty of any offense of any nature in connection with or growing out of this shooting affray.

This fact alone, disregarding altogether their own positive testimony as to their innocence, should be enough to authorize the acceptance of the affidavits they will be required to make under the bill I have offered as a sufficient basis for their re-enlistment, especially in view of the fact that it is provided in my bill—

"That nothing in this act contained shall be construed to prohibit the prosecution and punishment of any soldier re-enlisting under the provisions hereof as to whom it may at any time hereafter appear that he did participate in said shooting affray or have knowledge thereof which he has withheld."

If these men are innocent as they claim to be, they can not make other or further statement than my bill requires them to make, for all an innocent man can do if charged with the commission of an offense is to say he did not do it, and that he knows nothing whatever about it, except it be to account for his whereabouts at the time when the offense was committed, and that has been done by every man in this battalion who was present at Brownsville that night.

To require more is to require an impossibility, and to require a man to prove his innocence is to outrage justice by reversing the rule of evidence that obtains in every civilized country.

But the bill offered by the Senator from Missouri is most extraordinary in another respect. I venture to claim that it is without a precedent in all the history of the liberty-loving English-speaking nations of the earth.

It requires two things of these men in violation of the fundamental spirit of our institutions and which, in my opinion, it would be a disgrace to the Congress of the United States to exact:

First, that men accused of crime shall prove their innocence; and, second, that they shall prove their innocence to the satisfaction of a judge who has already prejudged their case, not once, or twice, or three times, and casually, but repeatedly and officially, and each time with a manifestation of the most unqualified conviction that not only some of the men discharged did the shooting, but that many, if not all of them, had knowledge of the perpetrators which, through a conspiracy of silence, they have refused to divulge.

In his message to the Senate of December 19, 1906, in response to resolutions of the Senate calling for information on the subject, the President said:

"I am glad to avail myself of the opportunity afforded by these resolutions to lay before the Senate the following facts as to the murderous conduct of certain members of the companies in question, and as to the *conspiracy* by which *many* of the other members of these companies saved the criminals from justice, to the disgrace of the United States uniform."

In that same message, in another connection, he said:

"As to the non-commissioned officers and enlisted men, there can be no doubt whatever that *many* were necessarily privy, after if not before the attack, to the conduct of those who took actual part in this murderous riot.

"I refer to Major Blacksom's report for proof of the fact that certainly some, and *probably all*, of the non-commissioned officers who were in charge of quarters, who were responsible for the gun racks and had keys thereto in their personal possession, knew what men were engaged in the attack."

Further along in that same message he said:

"There is no question as to the murder and the attempt at murder; there is no question that some of the soldiers were guilty thereof; there is no question that *many* of their comrades privy to the deed have combined to shelter the criminals from justice."

Again, in that same message, he speaks on that same point, as follows:

"So much for the original crime. A blacker never stained the annals of our Army. It has been supplemented by another only less black in the shape of a *successful conspiracy of silence* for the purpose of shielding those who took part in the original conspiracy of murder."

Further along in that same message he repeats, as follows:

"Yet some of the non-commissioned officers and *many* of the men of the three companies in question have banded together in a conspiracy to protect the assassins and would-be assassins who have disgraced their uniform by the conduct above related. *Many* of them may have known circumstances which would lead to the conviction of those engaged in the murderous assault. They have stolidly and as one man broken their oaths of enlistment and refused to help discover the criminals."

In that same message occurs also the following:

"Incidentally I may add that the soldiers of longest service and highest position, who suffered because of the order, so far as being those who deserve most sympathy, deserve least, for they are the very men upon whom we should be able especially to rely to prevent mutiny and murder."

In his message of January 14, submitting the Purdy testimony, occurs the following:

"The evidence, as will be seen, shows beyond any possibility of honest question that some individuals among the colored troops whom I have dismissed committed the outrages mentioned, and that *some or all* of the other individuals whom I dismissed had knowledge of the deed and shielded from the law those who committed it."

And then, finally in that same message, as though afraid his numerous positive and unqualified statements on this point would not be believed, he said:

"It is out of the question that the fifteen or twenty men engaged in the assault could have gathered behind the wall of the fort, begun firing, some of them on the porches of the barracks, gone out into the town, fired in the neighborhood of 200 shots in the town, and then returned—the total time occupied from the time of the first shot to the time of their return being somewhere in the neighborhood of ten minutes—without *many of their comrades* knowing what they had done.

"Indeed, the fuller details as established by the additional evidence taken since I last communicated with the Senate make it likely that there were *very few if any*, of the soldiers dismissed who could have been ignorant of what occurred. It is well-nigh impossible that any of the non-commissioned officers who were of the barracks should not have known what occurred."

While these assertions, repeated over and over again in the most extravagant language, show after all, as General Garlington reported, that there was no evidence to establish a conspiracy of silence, and that the charges and assertions that there was such a conspiracy rested only on deductions that there must have been such a conspiracy because nobody would tell of that about which all claimed to have no knowledge, yet that very fact but emphasizes the President's unfit state of mind to act judicially in passing upon the applications of these men to re-enlist as proposed in the bill introduced by the Senator from Missouri.

If these men are innocent, as they claim and as I believe, what else could they have said or done? Will some man please tell what word any one of them has uttered or what thing any one of them has done inconsistent with the innocence they assert. And yet, because they have said and done precisely what as innocent men they should have said and done, for that very reason they are arraigned as guilty of conspiracy and denounced in terms harsh enough to manifest exasperation because they will not confirm the charges against them and thereby

establish an excuse for the crime that has been so inconsiderately committed against them and their rights, if they are in fact innocent, as they claim to be.

It would seem that we are to be carried back in the administration of justice to the days when men and women put on trial for witchcraft found no avenue of escape from punishment, brutality, and execution, except only in confession—to the days when if a man but stood mute he was liable to be put to death for it.

The President gives no intimation, except as already indicated, that his mind has undergone any change. He would therefore become judge of the worthiness of these men to re-enlist if we should pass the bill introduced by the Senator from Missouri, firmly possessed of the conviction that very few, if any of them, were free from guilt. In other words, practically every man of the battalion would have to prove his innocence before one who has over and over again formally and publicly adjudged him guilty and denounced him as guilty in the severest language of censure and condemnation.

Another reason why this duty should not be intrusted to the President is that it would be impossible for him to act upon all these cases in detail, giving to the testimony of each of the 167 men, if all should apply to re-enlist, that careful consideration which fair-dealing would require.

It may be assumed that no one would expect him to personally examine the testimony in each case and pass judgment as the bill contemplates. He would of necessity have to call some one to his assistance to examine the testimony and advise him, but who would that be? Possibly the Secretary of War, who has expressed his agreement with the President in all he has said and done in the whole matter, and in every other matter. (Laughter.) But he, too, is a busy man, and would doubtless require the help of a suitable subordinate, and thus in all probability General Garlington, as the Inspector-General of the Army, and one of the officers who made a special investigation, would again come to the front, and to know his unfitness for such a duty we have but to recall that he testified before the Committee on Military Affairs that he would not believe anything anyone of these soldiers might say about this matter, even under oath, unless corroborated in some satisfactory way.

But if none of these should be called upon to assist the President, then somebody else—nobody knows who—would become the judicial adviser, to the satisfaction of whose whim the men would have to prove their innocence.

Moreover, how would such a proceeding be conducted? Would it be public or private? It is a constitutional right of the most important character that all trials upon indictments involving criminal charges and convictions shall be public, to the end that the public may see to it, through the power of public sentiment, that no man shall be unfairly condemned. This trial would not be within the letter, but it would be within the spirit of the Constitution, for these men are not now soldiers to be dealt with arbitrarily, but plain American citizens, invested with all the rights of citizenship, who are seeking not only a restoration of their good names, but also of valuable property rights, to all of which they are confessedly entitled, if not found guilty of crime. They should

not be dealt with, therefore, in the dark, as though a lot of chattels, for that day for the American Negro has forever passed, but as American citizens, entitled to the same rights white men would have under the same conditions.

In so far as we are to be governed by the fact that they were soldiers and may be soldiers again, we should remember, as Secretary Taft said of the white soldiers who shot up the town of Athens, Ohio, that they are, in a sense, the wards of the Government, and for that reason entitled, under such circumstances, to the protection of the Government in all their legal rights. And if we are to be further reminded, as we have been, that the President is the Commander in Chief of the Army, it is a sufficient answer that, while that is true, yet also it is true that he does not create the Army. It is not for him to say who shall enlist or re-enlist. All that belongs to Congress.

In short, there is no excuse whatever for such a bill. To pass it would be but pretending to grant relief, for manifestly, unless there has been a decided change of mind, practically none would follow.

Our action would but add insult to injury. It would be without precedent, for it may be safely asserted, that never before in the history of civilization has a legislative body been invited to require men accused of crime to prove their innocence before a hostile judge who has already adjudged them guilty; and never before has there been a suggestion that any man worthy to sit in judgment upon the rights of his countrymen would accept such a duty if assigned him, if conscious of having the slightest prejudice against the accused.

By what right does the Senator from Missouri assume that the President is capable of such a manifest impropriety?

The vilest horse thief, the most dangerous burglar, or the bloodiest murderer would not be required either to prove his innocence or to submit to a trial before a judge who had in even the most casual way expressed the opinion that the defendant was guilty.

Such a performance would be justly denounced as a denial of one of the most sacred rights of citizenship and a lasting disgrace to the judge who perpetrated it.

Who are these men that it should be even suggested that they should be treated worse than common criminals?

They are at once both citizens and soldiers of the Republic. Aside from these charges, which they deny, their behavior, both in the Army and out of it, has justly excited the highest commendation. Their record is without spot or blemish.

They are typical representatives of a race that has ever been loyal to America and American institutions; a race that has never raised a hostile hand against our country's flag; a race that has contributed to the nation tens of thousands of brave defenders, not one of whom has ever turned traitor or faltered in his fidelity.

In every war in which we have permitted them to participate they have distinguished themselves for efficiency and valor. They have shed their blood and laid down their lives in the fierce shock of battle, side by side with their white comrades.

They are the direct and worthy successors of the brave men who so heroically died at Petersburg, at Wagner, and on scores of bloody fields that this nation might live.

Faithfully, uncomplainingly, with pride and devotion, they have performed all their duties and kept all their obligations.

They ask no favors because they are Negroes, but only for justice because they are men. (Applause in the galleries.)

The speech was not only well received by the Senate, but also by the whole country. I received hundreds of letters and telegrams of congratulation in addition to other hundreds that were orally extended.

Among these letters, and one I prize very highly, was the following from Dr. J. G. Schurman, President of Cornell University:

OFFICE OF THE PRESIDENT,
CORNELL UNIVERSITY,
ITHACA, NEW YORK.

April 27, 1908.

My Dear Senator Foraker:—I read last night the speech you made in the Senate on April 14th on the Brownsville matter. I may say that I read every sentence of it and read it carefully.

The first thing I should like to say about it is that it is extremely interesting. The next is that as a statement and argument it is overpoweringly conclusive. I had not before gone exhaustively into the details of this subject, having read only the newspaper reports and brief abstracts of speeches. But after reading your speech I am absolutely convinced, as I had previously been led to believe, that the President has made a terrible mistake and that men have been dismissed without honor from the Army against whom there is not a scintilla of evidence proving them guilty of wrong-doing.

The *spirit* of your address is admirable. A deliverance from the bench could scarcely have been more judicial. If there are political antagonisms within the Republican Party, there is certainly no evidence of it in your speech. It reminds me rather of a scientific investigation or a judicial inquiry, where the sole object is to discover the truth on the basis of the facts of the case. And there is one feature of your address which illustrates the maxim of the greatest scientific investigator of the last century or two. Darwin said that in the pursuit of scientific truth it was the *trifling* facts which were significant. On the face of it the discovery of those shells within a circle of ten inches in diameter was a most "trifling" fact. Yet what immense consequences you have drawn from it and from the story of the four guns!

You had an enviable opportunity of rendering the highest service to the cause of justice and to the rights of man, and you have acquitted yourself with triumphant distinction. The speech is destined to accomplish great immediate good. And it will long be remembered as the voice of a public conscience outraged by the injustice, dishonor, and tyranny to which American citizens have been exposed.

Very sincerely yours,

THE HON. J. B. FORAKER,
Senate Chamber,
Washington, D. C.

J. G. SCHURMAN.

CHAPTER XLIII.

THE BROWNSVILLE AFFRAY—*Continued.*

I HAVE shown that the testimony first submitted by Major Blocksom, although only loose-jointed, unsworn, inconsistent and contradictory statements, was regarded by the President as "conclusive," but that after I had dissected it and shown its deficiencies and general unworthiness, he sent Major Blocksom back to Brownsville, accompanied by Mr. Purdy, to secure the same testimony under oath and all additional testimony that it was possible to get against the men, and that on their return to Washington they brought with them a lot of affidavits and a number of exhibits, which the President again deemed "conclusive" in character, and so conclusive that he did not hesitate, in his official Message to the Senate to impugn the honesty of any one who would upon such testimony pretend to doubt the truth of the charges upon which he had acted.

The testimony taken originally was *ex parte* and not sworn to. The testimony taken in the second instance by Purdy and Blocksom was given under oath, but it was *ex parte*. The men had no notice of the proceeding, and, therefore, had no one present to cross-examine the witnesses, or to represent them in any way whatever.

In both his Messages transmitting the testimony the President had ignored the sworn testimony given by the men, and also that which was given by their white commissioned officers, all of whom were gentlemen of the very highest and most unimpeachable character.

Having twice submitted "indisputable and overwhelming testimony" and the committee having taken thousands of pages of evidence in connection with which the men were subjected to the most rigid cross-examination, I was quite sur-

prised to hear some time after my speech of April 14, 1908, during the adjournment of the Congress, that again some one was busy trying to get *additional* testimony, and that in this behalf *detectives* had been engaged by the Government, who were seeking by all kinds of unfair and dishonorable methods, going even to the extent of manufacturing false and pretended confessions, and using and publishing them, in order to make for the third time a "conclusive and overwhelming case," in addition to the case made by the committee against which my speech of April 14th had been directed.

I had borne with the utmost patience all that had been done against the men on the part of the Government, which ought to have protected them, to convict them of the crimes with which they were charged. While not hesitating to defend them by argument and to attack and destroy, in so far as I was in that way able to do so, every accusation brought against them, and all the testimony with which it was sought to support such accusations, yet I had used only the most respectful and strictly parliamentary language, so much so that no one in the Senate or outside, especially not the President, had any right to complain of anything I had said or done; but when this fourth attempt to make a case against these men, by which they could be smirched and destroyed, became known, and I became familiar with the character of the work that was going on and the relation to that work of the President and Mr. Taft, the Secretary of War, I felt that, while it was gratifying to have another such admission that the President knew he had not made a "conclusive" case, or any other kind of case, yet an unspeakable outrage was being committed; a greater crime in fact, considering the methods that were being employed to fasten the crime of murder on innocent men by false testimony, than any with which the men were charged, and that the time had come for plain speech, and that it was my duty to act accordingly. Promptly after Congress reconvened in December, the President sent us another Message, laying the alleged results of this effort before us. I answered at once, challenging the legitimacy and the truthfulness of his additional testimony, using the

letters I had received, and later, on the 12th day of January, 1909, I at length reviewed this latest, and, as I thought, most indefensible phase of the whole matter, using sworn statements which I had taken the trouble to gather.

I recited the history of the several investigations, reports and messages, and how each time the President had pronounced the testimony against the men "conclusive," and how, nevertheless, he had immediately after my answer to each such message sought to get new or additional testimony, which indicated that, notwithstanding his positive assertions, he still had doubt.

I then showed from letters I had received and from affidavits given not only by the soldiers, but from a number of leading white men of the South and from the official records of the War Department, that after, according to the President, it had been "thoroughly established" that the men were guilty, as much as \$15,000 had been paid to detectives from a balance of what I claimed was a lapsed appropriation, to try to get some *real proof*, and that in this behalf every rule of evidence applicable had been violated, and all without securing one iota of proof that I was not able to refute and destroy absolutely, and did destroy the moment it was offered.

This last effort to convict was not only utterly futile, but, because of the methods of the detectives, even criminal. I did not hesitate to call things by their right names, as will appear from the following quotation:

This Message of the President, with its exhibits, and this report of the Secretary of War present a new and most serious feature of this unhappy business. They not only disclose determined effort on the part of the President to again bolster up the case against these men, which he has heretofore, on numerous occasions, both officially and unofficially characterized as "conclusive" and "overwhelming," but that he has resorted to a method in his effort to secure such testimony that can not be fittingly characterized without the use of language which, if employed, might appear to be disrespectful to the Chief Executive. And worst of all, in this endeavor to secure such testimony the President has, himself, committed the serious offense—condemned by every court that administers the common law that has ever had occasion to speak on the subject—of holding out to these men an inducement, or a reward, for giving such testimony, in the form of re-enlistment, with full pay, of which they had been deprived and reinstatement to all their rights as soldiers.

It does not lessen the gravity of his offense that it appears to be imperceptible to him; or, if not so, that he has become utterly oblivious to all the restraints of law, decency, and propriety in his mad pursuit of these helpless victims of his ill-considered action. I shall be able to show, I think, that all this has been done without the authority of law and with public money that has been literally filched from the Public Treasury in flat defiance both of the Constitution of the United States and of statutes enacted by Congress applicable thereto.

I do not hesitate to say that in my opinion, aside from the question whether there has been a misappropriation of public funds, no precedent for anything so shocking can be found in all the history of American criminal jurisprudence.

It will appear from the President's Message—and that is what I refer to when I say that, and the exhibits thereto attached showing the mode in which the detectives are operating, and the testimony in answer thereto, which I shall submit presently—that fraudulent impersonation, misrepresentation, lying, deceit, treachery, liquor, and intoxication, coupled with promises of immunity and the excitement of hope and fear, and the offer of employment and remunerative wages, have been resorted to to secure the testimony sought for, and that the so-called "confessions" are not confined to such as affect the parties making them, or to those affected by them, who may be present when such confessions are made, but extend also to those not present when they are made, but who are absent and without knowledge of what is transpiring, and without any opportunity whatever to be heard in their own defense, even to make an objection that such statements and such confessions are untruthful.

The following further quotation from my speech shows that I was fully justified in characterizing as I did the work of these so-called detectives and their methods.

After citing numerous authorities to show that "confessions" are never heard as evidence except where shown to be purely voluntary and free from inducement by promise of protection or reward and free from threats and duress, I read first the affidavit of Boyd Conyers:

GEORGIA, Walton County:

In person appeared before me Boyd Conyers, who on being duly sworn deposes and says: "The statements made by me in the several letters written by me to Senator Foraker and published in the *Congressional Record* of December 14, 1908, are true."

Senators will remember the report that Boyd Conyers made a confession to William Lawson, a negro detective, ignorant and illiterate, who signed his name with his mark. He gave the day and date that the confession was made to him. Then Browne testified under oath that he interviewed Conyers in Georgia and secured a confession. Here is what Conyers says under oath:

"I desire to further say that I did not have any conversation with William Lawson, the negro detective, as stated by him, on

the morning of June 8, because I was at work three miles from the city of Monroe at that time, helping to grade the target range for Company H, Second Georgia Regiment, National Guard. I did not go to Gainesville, as stated by him, on the negro excursion June 15, for I was at work cleaning up the post-office until dinner time that day, and after dinner I went out to the target range and helped to put up the targets. I did not see and talk to him on June 29th, as stated by him, for my wife was dangerously sick at that time and expected to die. I never did at any time have any private talk with him, and I most solemnly swear that every word of his statement as to talks had with me or confessions made by me to him, or statements made by me to him, in regard to the Brownsville affair, or affecting me in any way, is utterly and absolutely false.

"I desire to say, further, that Sheriff E. C. Arnold was present at all of the interviews between Mr. Herbert J. Browne and me and took an active part in trying to get me to make a confession. He knows, for he was present and heard every word that I said, that I made no confession, that I denied all the time knowing anything about it; and I here say that I made no confession of any kind to Mr. Browne, and that the statement or report made by him and published in the *Congressional Record* of December 14, in so far as the same refers to me or affects me in any way, is not true, but a misrepresentation of the real truth.

"BOYD CENTERS.

"Sworn to and subscribed to before me January 4, 1909.

"J. O. LAWRENCE,

"Notary Public, ex-officio Justice of the Peace,

"Walton County, Ga."

Now I will read the affidavit of E. C. Arnold. I see present the junior Senator from Georgia (Mr. Clay). I should like to know whether he knows E. C. Arnold, Sheriff of Walton County; and if so, what kind of a man he is?

Mr. Clay: I have known Mr. Arnold for fifteen or twenty years. He is a most excellent man in every respect.

Mr. Foraker: I should judge so from this affidavit and from the position he holds in his county. I do not think Mr. Arnold needs a certificate of character, except only to those who imagine that every man who does not agree to what is put out from certain places is dishonest or actuated by some unworthy purpose or motive. I venture to say he would compare favorably either with Herbert J. Browne or William Lawson.

STATE OF GEORGIA, *Walton County:*

"In person appeared before me E. C. Arnold, who, after being duly sworn, deposes and says:

"I am at present and have been for twelve years the Sheriff of Walton County, residing in the city of Monroe. For several years prior to my election to the office of Sheriff I was Chief of Police of Monroe. I have recently been elected Ordinary of the county, and will begin the duties of that office tomorrow, January 1, 1909.

I desire to say that I know very little about the statements made by William Lawson, the negro detective, in his affidavit published in the *Congressional Record* of December 14 as to the conversations had with and confessions made to him by Boyd (Buddie) Conyers."

He is apparently known there as "Buddie"—

"But I do know, in all reason, that that part of his statement about he and Conyers 'stopping under a storehouse porch near Main street and taking a drink or two of liquor' is necessarily false. There is only one such place that he could have reference to, and that is right in the business heart of the city, in full view of the court-house, of the public square, the city hall, and other public buildings. In fact, it is one of the most public and conspicuous places in the city, and in my opinion it would have been impossible for them to have taken a drink at that place without being seen and cases made against them in the police court.

"As to the report made by Herbert J. Browne and published in the *Congressional Record* of December 14, I desire to say that on the morning of October 6 Hon. George M. Napier, who until recently was Judge-Advocate-General of the State troops (National Guard), came into the court room, court then being in session, and requested me to come over to his law office, as he wanted to see me on some important business. In a little while I went to his office, where he introduced to me Mr. Herbert J. Browne as a special agent of the Government sent here to investigate the Brownsville raid. Captain Napier told me that Gov. Hoke Smith had called him up over the phone and had requested him to see me and ask me to assist Mr. Browne in every possible way in the matter. I talked over the matter fully with Mr. Browne during the day, arranging plans and details. Early after supper I had Boyd Conyers to meet us at my office. I fastened the doors, so no one could interrupt us, and then we put him through the most rigid examination I have ever seen any person subjected to in all my long experience in dealing with criminals. I have always believed that some of the soldiers 'shot up Brownsville,' and for this reason I was glad of an opportunity to aid in getting at the bottom of it, finding out the guilty ones, so that they might be properly punished. I, therefore, went into the matter with Mr. Browne with my whole heart in the work. We kept Conyers under a most severe cross-examination until about 11 o'clock that night, but without getting any information, he positively denying all the time that he knew anything to tell, as he was asleep at the time of the shooting. We then adjourned for the night, but made an engagement with him to meet us the next morning. Conyers came promptly, but Mr. Browne, in the meantime, had changed his plans and decided to go back to Atlanta, so we had no conference with Conyers that morning. At noon of October 11th Mr. Browne returned to Monroe, and just after dinner I went for Conyers and had him come to my office. We again kept him under a most rigid examination until after dark. I was personally present all the time at both of these interviews, assisting Mr. Browne in every

way possible, and heard everything that was said. On both of these occasions we used all the power, skill and means at our command to get a confession out of Conyers or to get him to tell who did the shooting, but he continued to deny knowing anything about it. Mr. Browne had told me that Conyers had made a confession to William Lawson, the negro detective, but that he wanted to get a confirmation of it direct from Conyers. He said that he was direct from the President—"

And he was; and he was acting under his immediate direction and upon his suggestion in this matter, infamous as it is—

"and was prepared to offer Conyers absolute immunity from any punishment and a pardon from the President if he would only tell what he knew. Conyers had known me all of his life and had absolute confidence in my ability to carry out any promise I made him. I told him that if he would just tell the whole thing—just own up and tell it—no matter how guilty he might be, I had it in my power to see that he was pardoned and would not be punished, but if he did not tell it and it had to be proved on him, then he would be severely punished. We made all sorts of promises to him—"

Remember the authorities that I have read. It seemed tedious when I was reading them, but I was reading them because they fit this case, and I want Senators to know how Judges in administering our law comment on such performances as this.

"We made all sorts of promises to him; then we told him what the consequences would be if he did not tell it, but he still denied knowing anything or who did the shooting. Mr. Browne then told him about his confession to Lawson. Conyers said Lawson had lied; that he had had no talk with Lawson about the matter. Then Mr. Browne told him that about twenty of the soldiers were talking already and telling it, and that the truth was coming out, and if he wanted to escape punishment he had better tell it. Conyers still denied knowing anything, or who did the shooting. I desire to state further that I have carefully read the several letters written by Boyd Conyers to Senator Foraker in regard to what took place between him and Mr. Browne, published in the Congressional Record of December 14th, and the whole thing took place just as he has outlined it in these letters, only he omitted to state the part taken by me in the matter. The details as set out by him in these letters are stated with remarkable accuracy."

"Mr. Browne told Conyers, in my presence, that Lawson had told him that Conyers made the confession to him on the excursion trip to Gainesville. Conyers told Mr. Browne that Lawson had lied, because he, Conyers, did not go to Gainesville on the excursion, and could prove it. I desire to state further that the report—"

Now, I call careful attention to this:

"I desire to state further that the report of Mr. Herbert J. Browne in this matter as published in the Congressional Record

of December 14th, in so far as the same relates to these conversations with Boyd Conyers, is not true. To the contrary, and I say it under my solemn oath, it is the most absolutely false, the most willful misrepresentation of the truth, and the most shameful perversion of what really did take place between them that I have ever seen over the signature of any person."

Yet a President of the United States, acting through the Secretary of War, is continuing the employment of a man who is infamous scoundrel enough to thus undertake to impose upon the President and upon the Senate, and this is being continued after warning was given from here of the character of this man Browne.

If I speak plainly, Mr. President, it is because we have reached the point where only plain talk would seem to properly meet the requirements of the case.

Now, that is not all—

"The most willful misrepresentation of the truth, and the most shameful perversion of what really did take place between them that I have ever seen over the signature of any person. Surely Mr. Browne must have thought that this report would never be seen or read by me, or he would not have made it. I was both shocked and horrified when I read it."

I wish somebody else, who prates about the dishonesty of other people, would be shocked and horrified by something.

"When we had utterly failed to get a confession or any information out of Conyers as to who did the shooting, then Mr. Browne asked him to give the names of some of the baseball players and also the names of some of the most reckless and turbulent members of his company. This Conyers did, giving several names, and these same names, so given by Conyers in my presence, Mr. Browne, in his report, says were furnished him by Conyers as the ones participating in the shooting. I point this out as a fair example as to how Mr. Browne has perverted the truth and the real facts in the case in his report.

"I will state further that Mr. W. G. Baldwin came here. He told me that the letter purporting to be written by James Powell, as published in the *Congressional Record* of December 14th, was a decoy letter written by him."

Senators will remember that one of the conspirators who, it was alleged, helped to plan and helped to execute the shooting up of Brownsville was this man James Powell, an ex-soldier of this battalion, as charged, and they introduced a letter written by James Powell to Boyd Conyers, his comrade and friend, at Monroe, Ga. When Conyers was asked about that letter he said: "I do not know that man Powell. I got such a letter, but I do not know him at all. I never saw him. I never heard of him. There is no reason why he should write to me." Now, it comes out that that was a decoy letter, and not written by James Powell, but written by W. G. Baldwin, this representative of the Government. And then, later, Mr. President, it turns out by his own

confession, by his own statement, that James Powell never belonged to this battalion. He had been a soldier in some other regiment some years ago, but he had been living in Atlanta since long before the shooting affray occurred, in the service of a Doctor Crenshaw. The Senators from Georgia may know him. Then he said he had no knowledge whatever of Brownsville, and had never been there.

Oh, such plotting, such planning, simply to save somebody's face—I need not say whose. That is the plain English of it. That is what the power of this Government and the Public Treasury of the United States are being subjected to in this matter.

"He—

Mr. Baldwin—

"also told me that he knew very little about William Lawson, the negro detective, as he had only been with him a few weeks (having been sent to him by his brother), and that he had already caught him in several crooked statements. He also said that he had sent George Gray—"

From whom I read a letter a few minutes ago—

"a private in Company C, and who was in the army with Conyers here, to see Conyers after Lawson had left. That Gray came here and spent the day with Conyers, and on his return reported no information.

E. C. ARNOLD.

Signed and subscribed to before me December 31, 1908.

JOHN T. ROBERTSON,
Clerk Walton Superior Court."

Now here, in order that Senators may know what kind of methods are resorted to to get testimony, let me read the following affidavit from Frederick D. McGarity. He is the assistant cashier of the leading bank in Monroe, a white man.

"STATE OF GEORGIA, *Walton County*:

"In person appeared before me Fred D. McGarity, white, who, after being duly sworn, deposed and said that on the night of November 28, 1908, and immediately after supper, a gentleman who registered at the hotel where I boarded introduced himself to me as *A. H. Baldwin*, having previously learned that I was a notary public, and requested me to go with him to the house of one *Lewis Anderson*, colored, for the purpose of attesting an affidavit. I went with him, as it was only a few hundred yards, not knowing the nature of the business. When we reached the place we found there *Lewis Anderson* and one *William Lawson*, a negro detective, who then requested *Anderson* to repeat what he had told him that *Boyd (Buddie) Conyers* had told him about the Brownsville raid. *Anderson*, who is an old man, vehemently denied having told *Lawson* anything about *Conyers*; said that *Conyers's* name had never been mentioned between them but one time, and that was on one occasion when *Conyers* passed by and *Lawson* asked him if that was *Conyers*, and he told him yes. *Anderson* further stated that he had had no talk with *Conyers*; that he had only spoken to him one time, and then only to say 'howdy'; that he had nothing to do with 'these young niggers.' *Lawson* insisted on *Anderson* making an affidavit that *Conyers* had admitted to him that he knew a great deal more about the

shooting at Brownsville than he had told. Lawson insisted that Anderson had told him these things while out fishing. Anderson strongly denied having told Lawson any such thing, and got his Bible and placed his hands on it and denied that he had ever made any such statements to Lawson, or that he had ever had any conversation with Conyers about the matter in any way, at the same time calling upon, or stating that God would strike him dead if he was telling a lie. Anderson denied making such statement to Lawson and refused to make the desired affidavit. Mr. Baldwin and I then went to the home of Boyd Conyers. Mr. Baldwin asked Conyers if he knew Lawson. Conyers stated that he knew him when he saw him. Baldwin asked him if he went on the excursion to Gainesville. Conyers answered that he did not. Baldwin told him that Lawson said he went and made a confession to him on the train in the presence of Lonzo Hennon, and that he, Baldwin, had Hennon's affidavit in his pocket showing this to be true. Conyers replied that he could not help what he had; that it was not true; that he did not go on the Gainesville excursion and had made no confession to Lawson or to any one else. Baldwin then asked Conyers how many men were arrested after the shooting. Conyers told him thirteen. Baldwin asked him to give the names of those arrested and Conyers did so. He asked Conyers if he was arrested, and Conyers said no. He asked Conyers who sent for him when he went to Washington. Conyers told him D. M. Ransdell, Sergeant-at-Arms United States Senate. He then asked him how much he got per day and how much expense money, etc. Conyers told him, but I do not remember the exact amount.

"I was present during all of the conversation and heard it all. Conyers positively denied knowing anything about the shooting, stating that he was asleep at the time the shooting took place. Conyers said nothing that would tend in any way to show that he had anything to do with the shooting, or that he knew anything about who did it. I am assistant to the cashier in the Bank of Monroe.

"FRED D. MCGARITY.

"Sworn and subscribed to before me January 4, 1908.

"J. O. LAWRENCE,

"Notary Public and ex-officio Justice of the Peace.

"Walton County, Ga."

For brevity's sake I omit as unnecessary five additional affidavits of white men all to the same general effect.

Now, here follows a statement made by the Captain of the National Guard company, who is the cashier of the bank, not sworn to. It reads as follows:

"MONROE, GA., December 24, 1908.

"To whom it may concern:

"This is to certify that I have known Boyd Conyers for twelve to fifteen years, during the most of which time he has resided here. He has been in my employ a number of times, and during the past

year he has been janitor for the Walton Guards, Company H, Second Infantry, National Guard of Georgia, of which I am Captain. I secured him for this position on account of his experience in military service, which made him efficient in the matter of care of military property. I have always found 'Buddie,' as he is known in Monroe, to be honest, reliable and trustworthy. I have talked with him a number of times about the Brownsville trouble, and he has always told me the same story, to-wit, that he had no part in the shooting, and did not know any one who did; that he was on guard duty, and that he was asleep at the time the difficulty occurred. *From my knowledge of him, I do not think he would have taken part in such an affair, for he has always borne the reputation of being a quiet, peaceful, and law-abiding citizen.* When the report became current in Monroe that he had confessed to a detective that he took part in the Brownsville shooting, he was very much exercised over it, and came to me and insisted that he had made no such confession, and I was impressed with his sincerity in the matter.

"Respectfully,

"ALBERT B. MOBLEY."

Now, Mr. President, I hazard nothing in saying that this testimony will prove sufficient to firmly establish in the minds of all honest men—I have gotten so that I rather like to use that word myself—to firmly establish in the minds of all "honest" men, from one end of the land to the other, not only that the reports of these so-called "detectives" in so far as they attempt to show confessions and incriminating statements made by Conyers, are base fabrications, without any truth whatever on which to rest, but that the whole work in which they have been engaged is the result of a plot and a conspiracy blacker and more damnable than anything that has been charged against the soldiers themselves, even if the worst that has been said should prove to be the truth; for, atrocious and indefensible as is the crime of murder, more atrocious and more indefensible still is a cold, scheming, calculating plot and conspiracy to fasten the crime of murder upon an innocent man.

If Senators could but see Boyd Conyers, as I recall him when he appeared upon the witness stand, a young man, a mere lad, who was serving his first enlistment, who had been a member of the battalion only one year, who is spoken of by Herbert J. Browne in his report as a recruit, and who was doubtless regarded by the older soldiers of the battalion as a mere recruit—for so would one appear to a soldier of twenty or twenty-five years' service who was serving in the first year of his first enlistment—if Senators could but see his frank, open, manly face and manner as he testified, manifestly anxious to tell the truth and the whole truth, and withholding nothing whatever, they would conclude with me that he was the last man to be thought of as capable of the plotting of a conspiracy in which he was to involve his older and more influential comrades—a conspiracy that involved the most serious violation of every duty as a soldier, not only for himself, but for everybody else connected with the plot—if Senators could only see what I see—as I now recall him, it would not require any word of argument or of testimony from anybody to show the utter wickedness of these charges against him.

According to the citizens of Monroe, Ga., who have known him all his life, he is a man with a blameless record, enjoying the confidence and respect of every white man, as well as every colored man in that community, and this, according to their testimony, was true of him not only before his enlistment, but is true of him since his return from the Army. Is it possible that in one short year in the service under strict discipline he turned to be such a desperado as Mr. Browne and his fellow conspirators would have us believe; and then instantly turned back again to his former self when he was turned out of the service? If he thus turned criminal, why did he do it?

There is not one word of testimony to show that either he or any member of Company B had the slightest trouble with any citizen of Brownsville. On the contrary, the testimony is uncontradicted and conclusive that no member of that battalion had any trouble with the citizens of Brownsville, except only three or four men of Company C; and it was on account of these troubles of men belonging to Company C, coupled with the fact that Company C had trouble about opening its gun racks, and on account of the delay so occasioned—they were violently broken open—that Major Blocksom intimates in his report that members of Company C probably planned the raid and executed it. That was the only company that had any provocation to do anything of the kind. But the testimony before the Senate committee showed that it was impossible for anybody connected with Company C to have participated in the raid, and all pretense of charging Company C with such responsibility has been long since abandoned.

I regret that want of space prohibits further quotations of the same character, which might be made to the extent of page after page, all showing that I dealt thoroughly with each case reported by the detectives and that I destroyed each case as thoroughly as I destroyed that reported against Conyers, and showing, also, that severe as was the language I employed, it might have been still much more severe without any exaggeration whatever.

I spoke at great length, dealing in detail and elaborately with both the facts and the law applicable thereto. This was the last extended speech I made in the Senate. It proved sufficient, for February 23, 1909, a few days before my term of service expired, I succeeded in getting a vote on my bill, in an amended form. Fifty-six Republicans voted for it and twenty-six Democrats voted against it. The other Senators, Republicans and Democrats, were either absent or paired.

Most of the Democrats seemed delighted to vote as they did; but some of them, notably Senator Tillman, who, as usual, had

been honest, frank and manly throughout the discussion, was evidently somewhat troubled by the attitude in which the drawing of party lines placed him. At any rate, in explanation of his vote, he made the following remarks:

Mr. Tillman: Mr. President, I wish briefly to explain my vote on this bill.

When the Brownsville matter was first brought into the Senate, I took the position, I believe alone among Democrats, that the President was not warranted in his action; that his dismissal of the troops under the conditions and circumstances was cruel and contrary to all ideas of justice which I had ever read about or thought about. The majority of the Senate then took a contrary position and sustained him. The Senate today has reversed and stultified itself and emphatically condemned his action by the step which it has just taken, which permits all of these troops to be re-enlisted under certain conditions—guilty and innocent alike.

My position then was that the President ought not to have dismissed and punished innocent men because some men were guilty. We have to-day illustrated what used to be called on the Scotch border "Jedwood justice." When the lords of the marches caught some man who might have been suspected of stealing cattle or committing some other offense, they would hang him first and then try him afterwards. These negroes have been "hanged," so far as the President could do it, and now the Senate proposes to give them a trial and a tardy justice to those who may be able to prove their innocence, although I doubt if any can prove it. But it is a cardinal legal principle that a man must be considered innocent until he is proved guilty, and proving a negative is an impossibility. But my attitude is that somebody shot up Brownsville, and I believe some of the negroes did it, but not more than twenty-five of them were ever charged with it, while 168 were discharged. Now, to turn the whole bunch back into the army, as they doubtless will be, will be to admit into the service of the United States some men who have committed murder, for there is no doubt in my mind that you will never be able to find out who committed this crime. Therefore, as I did not want innocent men to be kicked out of the army, I do not want any guilty men to get back into the army, and so I voted "nay" on the proposition.

A few days later, February 27th, the bill passed the House, as it had passed the Senate, without amendment, by a vote of 211 yeas to 102 nays. A number of Republicans made brief remarks, but Gen. J. Warren Keifer of Ohio, and Hon. M. B. Madden of Illinois, made speeches that were very able and forcible.

The Democrats who spoke, as a rule, expressed bitter opposition to the measure, particularly the Honorable Champ

Clark, who, in the course of his remarks, which were somewhat lurid throughout, took occasion to refer to me as follows:

There has never been any partisan politics in this thing. There has been a great deal of factional Republican politics in it, as much as there was of partisan politics in the Homestead strike. This Brownsville wrangle removed Senator Joseph Benson Foraker absolutely as a candidate for the Presidential nomination. It contributed largely to an event that I am glad of, and that was the election of the Honorable Theodore E. Burton to the Senate of the United States by putting Senator Foraker out of the running. (Applause.)

He next indulged in an extravagant laudation of President Roosevelt and Secretary Taft for what they had done in connection with the matter, and then proceeded to compliment me further and still more extravagantly, by saying:

Mr. Speaker, there are some 200 of us in this town that one night witnessed a spectacle never seen before by human eyes and in all probability never to be duplicated in all the centuries yet to be. We saw a Senator of the United States (Mr. Foraker) in a public place hold a joint discussion with the President of the United States and hold his own. It grew out of this Brownsville business and was a most thrilling performance.

Richmond Pearson Hobson of Alabama, although a Democrat and although party lines were rather tightly drawn in the House, as they had been in the Senate, yet supported the measure not only with his vote, but also with some very able and eloquent remarks, from which I quote as follows:

When these crimes were committed at Brownsville, the President of the United States could have ordered all officers and men to remain within barracks and could have ordered a Court of Inquiry, followed by a court martial, which, held on the spot without delay, would no doubt have established the guilt or innocence of all the men, and would have given a regular legal opportunity to every innocent man to establish the fact of his innocence. If, under duly administered oath, any man had refused to tell the whole truth or had been found to have concealed or abetted the guilty, he could have been punished accordingly. By such a regular and legal procedure the guilty, all of them or part of them, at least, could have been brought to full punishment at the scene of their hideous crime, fulfilling the ends of justice. But the President did not proceed in this regular, legal way. He scattered the men, guilty and innocent alike, to the four winds, and thus prevented the ends of justice. This action of the President prevented the establishment of the guilt of the guilty and prevented the innocent from establishing their innocence. These men have never had a chance to appear before a Court

of Inquiry; never before a court martial; have never been under oath. This bill provides the least that can now be done for the cause of justice.

Mr. Speaker, I saw black men carrying our flag on San Juan Hill; I have seen them before Manila. A black man took my father, wounded, from the field of Chancellorsville. Black men remained on my grandfather's plantation after the proclamation of emancipation and took care of my mother and grandmother. The white man is supreme in this country; he will remain supreme. That makes it only the more sacred that he should give absolute justice to the black man who is in our midst. (Loud applause.) I submit it to the conscience of my colleagues. This ought not to be made a party measure. We are standing here on the field of eternal justice, where all men are the same. It is justice that links man to the Divine. Whether the heavens fall or the earth melt away, while we live let us be just. (Loud applause.)

The bill as thus passed was approved by the President. It provided as follows:

Be it enacted, etc., That the Secretary of War is hereby authorized to appoint a Court of Inquiry, to consist of five officers of the United States Army, not below the rank of Colonel, which court shall be authorized to hear and report upon all charges and testimony relating to the shooting affray which took place at Brownsville, Texas, on the night of August 13-14, 1906. Said court shall, within one year from the date of its appointment, make a final report and from time to time shall make partial reports to the Secretary of War of the results of such inquiry, and such soldiers and non-commissioned officers of Companies B, C and D of the Twenty-fifth Regiment U. S. Infantry who were discharged from the military service as members of said regiment under the provisions of Special Orders, No. 266, dated at the War Department the 9th day of November, 1906, as said court shall find and report as qualified for re-enlistment in the Army of the United States shall thereby become eligible for re-enlistment.

Section 2. That any non-commissioned officer or private who shall be made eligible for re-enlistment under the provisions of the preceding section shall, if re-enlisted, be considered to have re-enlisted immediately after his discharge under the provisions of the special order hereinbefore cited, and to be entitled, from the date of his discharge under said special order, to the pay allowances, and other rights and benefits that he would have been entitled to receive according to his rank from said date of discharge as if he had been honorably discharged under the provisions of said special orders and had re-enlisted immediately.

I would not have been content with the bill as it passed had it not been that I knew that with my retirement from the Senate no one would remain in either that body or in the House of Representatives who would champion the cause in which I had so long labored.

One reason was that so much literature on the subject had accumulated that it would be impossible for any one, not

familiar with it, as I was, to intelligently advocate a more satisfactory measure of relief without doing more hard work to study and master the record than the average Member of Congress has either time, ability or willingness to undertake.

My objection to the bill as passed was that it did not specifically state that all should be held eligible to re-enlist who were not affirmatively shown to be guilty of the charges that had been made as either principals or accessories, thus leaving room for an unfriendly court to so construe the act as to require the men to prove their innocence. Moreover, I feared that it would be easy to create a tribunal that could easily say, if the testimony fell short of an absolute demonstration, that they were not satisfied that the men were, in the language of the act, "qualified for re-enlistment," and thereby, without making any affirmation of guilt, deny relief; and what I thus feared is exactly what afterward occurred.

The Court of Inquiry consisted of the following: Lieutenant General Samuel B. M. Young, U. S. Army, Retired; Major General Joseph P. Sanger, U. S. Army, Retired; Brigadier General John M. Wilson, U. S. Army, Retired; Brigadier General Theodore Schwan, U. S. Army, Retired; Brigadier General Butler D. Price, U. S. Army, Retired; Captain Charles R. Howland, Twenty-first Infantry, Recorder.

Subsequent events confirmed my worst apprehensions. The inquiry was conducted in a way that would have been a surprise if the Court had been composed of citizens of Brownsville.

Only eighty-two of the discharged soldiers were allowed to appear and testify—there were more than seventy others clamoring to be heard when the Court announced that it would not hear any more witnesses.

The men were represented in this hearing by Brigadier General A. S. Daggett, U. S. A., Retired, and by Mr. N. B. Marshall, a Negro attorney of Washington, D. C. The testimony given was practically the same as that before the Senate Committee on Military Affairs. When all had been taken that the Court would hear, General Daggett reviewed it at length and analyzed it carefully and accurately in a very

able argument that nobody successfully answered or ever will successfully answer. He concluded with the following:

It is a principle of American and English law that *a man is innocent till proven guilty*.

It is an axiom of American and English law that *the law will not exact impossibilities*.

It has been said that these men must prove their innocence. Well, what can they do? How shall they do it?

Nearly every man in the battalion has testified that he does not know of any soldier who was engaged in the shooting. Tamayo, the Mexican, did not know of any soldier who was engaged in the shooting. The hospital steward, an unbiased witness, did not know of any soldier who participated in the shooting. Where could they find other witnesses who had any opportunity to know about the shooting? What other evidence was it possible for them to produce? Who can tell them?

At the close of Boyd Conyer's testimony . . . he made a brief statement. On being asked why he should be authorized to enlist, *no one will forget his pathetic manner and voice* when he said, "*I have done all I can. What more can I do?*"

The appearance of Sergeant Sanders before this court was dignified and convincing. *His bearing during the vigorous, violent examination was honest and frank, yet calm and self-contained. Such bearing was born only of truth. He entered the court room with a spotless record; he left it with that record illuminated.* When he appealed to the court to remove the foul blot from his name, the question arose in my mind with redoubled force, what more can he do? The law does not exact impossibilities. And when the final word came that separated Sergeant Sanders and other men of that battalion from the Army they loved so well and had served so faithfully, is it strange that they became heart-broken and threw themselves on their bunks and wept like children? Did these expressions of grief flow from murderers' hearts? Aroused by the affecting scenes of that hour, had there been a man possessing knowledge of that crime, he would have imparted it to his officers.

The honor of these men, dearer than life, is now with this court. It can continue the stigma on these men and their offspring for the present. It can remove the blot wrongfully, even with good intentions, placed on a clean page.

If ever there was a case where conscience should control, it is the one now awaiting decision.

This belongs to that class of questions that will never be settled till settled right.

The law does not exact impossibilities. What more can they do?

Mr. Marshall declined to make an argument, giving his reasons therefor as follows:

MAY IT PLEASE THE COURT:

The oldest and strongest presumption known to the common law of England and adopted by our country as the most sacred and inviolable corner stone of its criminal jurisprudence is the presumption in favor of

innocence of crime. In a comparatively recent decision in *Persons v. State*, 90 Tenn., 291, it was held that no presumption in a criminal case can be allowed to operate against the presumption of the innocence of the defendant. There are no decisions, Federal or State, to the contrary; and any departure from this basic principle might well be regarded as alarmingly subversive of our system of government. I therefore decline to submit an argument to this Court for two specific reasons: First, Because the procedure adopted by the recorder, and acquiesced in by this Court, leaves it undetermined in my mind whether this Court is a Court of Inquiry or a court martial; or, in other words, whether the recorder is an impartial investigating officer or a prosecuting officer. Second. Because the instructions of the Secretary of War to the Court conflict so fundamentally and totally with my legal training as to make it impossible for me to build an argument which would attempt to prove a negative.

For these reasons I can neither argue nor can I appeal to your merciful considerations; for in all honor this Honorable Court is bound by the limitations imposed by the authority from which its instructions proceed. I can simply submit that the evidence before this court fails entirely to prove the guilt of a single soldier of Companies B, C and D, Twenty-fifth United States Infantry, discharged for alleged complicity in the shooting up of Brownsville, Texas, on the night of August 13-14, 1906. And in this connection I desire to record the fact that I have for over three years diligently and honestly striven to ferret out the persons engaged in this crime, and that notwithstanding the fact that I have had close personal contact with nearly all the soldiers discharged as aforesaid, I have never adduced one clue which might lead to the identification of a single soldier. On the contrary, my investigations have tended to the conclusion that the shooting up of Brownsville was not an affray, but a crime committed by persons not in the military service of the United States Government. *The record of this court will show that I offered to produce testimony of an affirmative and positive character, giving the names of the participators in and the details of an alleged conspiracy to commit this crime. The record of this court will also show that no effort has been spared to produce before this Court evidence, no matter how flimsy or circumstantial, which might in the slightest degree tend to demonstrate the guilt of the men who formerly defended the flag and the honor of this, our common country. And yet I am not complaining for I have infinite faith in the judgment of a Divine Providence which, in the final analysis, holds for naught the judgments of mortal man and scorns the sophistry that although the integral parts of a given body may be innocent, the whole must be guilty. "Truth crushed to earth shall rise again."*

The Court found that fourteen of the soldiers had satisfied them that they were not guilty. No reason was given or shown why these fourteen should be found "qualified" that did not apply to all the others. This number was so small that the practical results were negligible, except only in the

fact that again *even* THAT Court was unable to find any testimony that identified any man in the battalion, white or black, with participation in the shooting, or with any responsibility for the same, or for the withholding of information in regard thereto.

I reviewed the action of the Court in the following statement, published in the daily press:

I am not surprised by the report the Court of Inquiry now makes, because I have anticipated such a result ever since the Court assumed powers that it was not intended by those who enacted the statute under which they have acted to confer.

This Court of Inquiry was appointed under an act approved March 3, 1909. At that time there had been repeated investigations of the Brownsville shooting affray—first, by the officers of the battalion; later by the grand jury of the county in which Brownsville is situated; later in connection with the court martial of Major Penrose, and again in connection with the court martial of Captain Macklin, who was the officer of the day on the night when the shooting was done, and then by the Senate Committee on Military Affairs. This latter investigation was exhaustive.

In no one of these investigations was any testimony adduced to show guilt on the part of any individual soldier, but on the contrary as in the case of the majority report of the Senate Committee on Military Affairs it was stated that while shells and bullets found and the testimony of citizens of Brownsville as to what they saw (it would be more proper to say didn't see), in the dark, indicated that some of the soldiers must have shot up the town, yet there was no testimony that led to the identification of any particular soldier.

The shooting was done in August, 1906. The act was passed therefore two and one-half years later. It was thought by the Congress that enacted this legislation that after so long a delay and after so many investigations a total failure of proof to fasten guilt upon any individual soldier was a strong evidence that even if any of the men were guilty there must have been many innocent men punished and that all such should be made eligible for restoration to the army, and that all should be allowed to re-enlist against whom no special charge was made and no evidence could be produced showing guilt.

In accordance with this idea an act was passed, of which the title itself indicates its nature. This title reads:

"An act to correct the records and *authorize the re-enlistment* of certain non-commissioned officers and enlisted men belonging to Companies B, C and D, of the Twenty-fifth U. S. Infantry, who were discharged without honor under Special Orders No. 266, War Department, November 9, 1906, and *the restoration to them of all rights* of which they have been deprived on account thereof."

This statute provides:

"That the Secretary of War is hereby authorized to appoint a Court of Inquiry, to consist of five officers of the United States

Army, not below the rank of Colonel, which court shall be *authorized to hear and report upon all charges and testimony* relating to the shooting affray which took place at Brownsville, Texas, on the night of August 13-14, 1906."

The remainder of the act provides that the Court shall from time to time make partial reports, and at the end of one year make a final report to the Secretary of War of their proceedings and action, and that—

"such soldiers and non-commissioned officers of Companies B, C and D of the Twenty-fifth Regiment U. S. Infantry, who were discharged from the military service as members of said regiment, under the provisions of Special Orders No. 266, dated at the War Department the 9th of November, 1906, as said Court shall find and report as qualified for re-enlistment in the Army of the United States shall thereby be found eligible for re-enlistment."

I have quoted the title to the act and these principal provisions of the act to show that it was the thought and purpose of the framers of this legislation to create a Court of Inquiry before which charges could be made against individual soldiers, and the soldiers so charged could be heard in their defense against such charges, and that except only as to such soldiers as charges might be made against, and be sustained against, by testimony, all were to be re-enlisted. No man was required to prove his innocence.

Nevertheless, the Secretary of War,* although a very worthy gentleman, happened to have had political antecedents and affiliations of such character as to cause him to take a different view of the law and to so instruct the Court with respect to its powers as to authorize it to sit not merely to hear charges and testimony with respect to those charges, but enter upon a general wholesale investigation on its own account. It would be more proper, in view of the character of it, to call it a prosecution with a view to convicting the soldiers upon the general charge that some of them shot up the town.

I have not read the testimony, but when I was in Washington a few days ago I had a conversation with General Daggett, who appeared for the soldiers before the Court of Inquiry, in which conversation he reviewed to me the proceedings of the court and the results of the testimony, and stated that no testimony was produced before this Court of Inquiry beyond what had been produced before the Senate Committee on Military Affairs and in the other investigations to which I have referred, and that the case as it stands today against the soldiers is one as to which there is an absolute failure of any testimony whereby to indicate the guilt of any individual man, and in his opinion no testimony to justify a finding that any of them had a part in it.

No charge of any kind was filed with the Court against any one of the discharged soldiers, nevertheless the Court promptly put them all on trial and, one after another, called before it eighty-three of the men and examined them in the most rigid and exhaustive way, just as more than sixty of them had been examined before the Senate Committee on Mil-

* Hon. Jacob M. Dickinson of Tennessee, one of the Democratic members of President Taft's Cabinet.

tary Affairs, without eliciting any proof beyond that which was known to the Congress of the United States and the whole country when the legislation under which this Court has acted was enacted.

In addition the Court took the testimony of certain witnesses which the recorder who produced them and the Court that heard them had every reason to know testified falsely, and yet the testimony of these witnesses was received, entered in the record and the witnesses allowed to depart without any attempt to call them to account for the perjury they committed. At the same time, when the Court was willingly receiving testimony of this character on which to convict the soldiers, they refused to hear testimony which tended to prove that the shooting was done by somebody other than the soldiers.

At last, apparently despairing of success in their effort to convict any individual soldier, the court stopped taking testimony, leaving more than seventy of the men uncalled, who are excluded by their report from the privilege of re-enlisting, although there was no charge of any kind filed against them and no testimony of any kind against any one of them as an individual; and all this without even allowing any one of the seventy men to appear before the Court to testify as to his innocence.

Such a procedure and such a result is not within either the language or the spirit of the statute creating the court, and under all the circumstances they amount to a greater disgrace to the American Army than anything could be with which this luckless battalion has been charged.

When the full report is before us it will be interesting to study and learn how and why the fourteen men who are pronounced eligible for re-enlistment should have been so acquitted and how more than 150 others should have been put under the ban of suspicion if not the verdict of guilty. Is it possible that more than 150 men could be guilty of such crimes as are involved in this matter—the crime of murder, the crime of rioting, the crime of perjury over and over again, the crime of conspiracy to commit crime and conspiracy of silence to conceal crime and half a dozen other crimes not necessary to be mentioned, and be able to conceal it through all these years and in spite of all the examinations and cross-examinations to which they have been subjected—conceal it to such an extent that not a single clue has been secured that justifies any member of that Court in naming any man as probably guilty? The very suggestion carries with it a refutation in the minds of all who are familiar with human experience. No such conspiracy and concealment of crime as are here involved ever occurred in the history of the world or ever will. The whole procedure has been of such character as to justify the following editorial of the New York World:

“THE BROWNSVILLE SHOOTING.

VERDICT SAYS NOBODY IS GUILTY, THEREFORE EVERYBODY IS GUILTY.

“Under the Foraker resolution the military Court of Inquiry appointed to investigate the Brownsville shooting affray, as a condition to their re-enlistment, was to pass on the innocence and guilt of the 270 negro soldiers of the Twenty-fifth Infantry who three years ago were dismissed without honor by President Roosevelt.

"Like all the previous investigating bodies, after a year's diligent efforts the Court is unable to establish the guilt of a single individual. Accordingly, after the Roosevelt procedure, it again convicts the entire battalion.

"The logic of the verdict is as clear as day. As the report reads, nobody is guilty; therefore everybody is guilty; and everybody being guilty, nobody is innocent, unless it be presumably the fourteen men recommended for re-enlistment. How they could escape being guilty when the entire battalion is guilty, except they were in Alaska or the Philippines or some equally distant place at the time of the shooting, is one of the mysteries of the case. And if these fourteen men are innocent, why have they been undergoing punishment for three years?

"One other point the Court brings out, perhaps inadvertently. According to its findings, if the officers of the regiment had performed their duties immediately prior to the shooting affray, it could not have occurred; and if also immediately after the shooting they had performed their duty, 'some of the guilty men would have been discovered.' So no guilty men have been discovered and 270 have been punished; but the officers, who did not perform their duty on two occasions, were known and have enjoyed immunity.

"To be successful a farce should lead up to a grotesque climax. The Court of Inquiry has done all that could possibly be asked of it to make this Brownsville burlesque upon justice a triumph of absurdity."

I think I am as familiar as any other man can be with all the testimony that was taken before this Court of Inquiry sat, and I have confidence that what General Daggett said to me as to the failure to secure any additional testimony against the men is true.

With this knowledge of the case the report made by the Court of Inquiry does not change my belief, as heretofore expressed, that not a man in the battalion had anything more to do with the shooting up of Brownsville than the Court of Inquiry had.

The passage of the bill was the occasion of a great many congratulations to me on the part of the people generally, particularly the Negro people of the country.

In recognition of what I had done, the colored citizens of Washington presented me with a silver loving cup. They did this at a great mass meeting held in the Metropolitan A. M. E. Church of Washington, D. C., March 6, 1909, two days after I had retired from the Senate.

Many white people were present, but the speeches of the occasion, except my own, were all made by colored men, and I think I can truthfully say I never heard abler or more eloquent oratorical efforts.

After thanking them for the loving cup, and particularly for their eloquent expressions of appreciation for my work in behalf of the battalion, and of regard and esteem for me as a man and as a public official, I took up the Brownsville matter and made some remarks, which I insert here, as in all probability the last expression I shall ever make on that subject:

My attention was directed to the matter because I was shocked by the idea that the President, without giving them a hearing, would convict those men of crime and dismiss them in disgrace. My attention was aroused in the first instance on account of the great questions of constitutional law involved; a question as to the constitutional power of the President on the one hand and of the constitutional rights of the helpless soldiers on the other hand.

At first I supposed, as a matter of course, as the newspapers announced, that some of the men had shot up the town. I thought I could understand why they had done so; that they had been mistreated and nagged at until they committed that grave offense. But as I began to go over the testimony, I doubted whether or not anybody in that battalion had anything to do with it. And when we began the investigation which was ordered by the Senate, and commenced examining the witnesses, I soon became clearly convinced that not a man in that battalion had anything to do with it. I am clearly of that opinion now. (Applause.)

There are many reasons for this opinion. I can not undertake to state all of them now; the hour is too late; but if you will bear with me I will mention some of them.

In the first place, it is now almost two and a half years since that trouble occurred. That would be a long time for a very small number of men to keep any such secret. But if the charges against the men are true, from ten to twenty of them actively participated in the firing, as many more were necessarily active accessories, and, according to the President, General Garlington and others, many others, if not the entire command, had knowledge that would have led to the identification of the guilty if they had not withheld it pursuant to a "conspiracy of silence," a new kind of crime never heard of by Blackstone or Kent, or any other law writer who wrote prior to this Brownsville occurrence, into which all entered except a few if any at all. In other words, the charge is that, speaking in round numbers, 167 men are guilty in one form and another, and that all have for two and one-half years been so close-mouthed that not a word has been dropped that gives any clue by which to establish the guilt of any one of them, and this on top of the fact that the active participators so carefully planned and so skillfully executed the raid as to leave no clue that leads to identification.

If this be true, then one of the most remarkable things that ever happened in all the world has occurred. When I say that, I do not refer to the shooting up of the town, for there have been many such occurrences, but to the fact that all this knowledge with which these men are

charged has been so successfully withheld and suppressed. Nothing equal to what this statement suggests has ever occurred in the history of the world, and in my opinion never will occur. I am sure 167 white men could not thus keep such a secret; and all will agree that 167 white women couldn't and wouldn't thus keep such a secret. (Laughter.) It needs no argument to satisfy any unbiased mind, possessing a knowledge of human nature, that no 167 men or women of any race or color could thus keep such a secret (applause); especially not when under surveillance and pursued, and dogged, by night and by day, by officials and spies and detectives of the government as these men have been.

But I recognize that this is not conclusive; therefore, let me mention some additional reasons.

Each man in that battalion was chargeable with a specific number of cartridges, supposed to be in his possession. The officers of the different companies knew exactly the number with which each man was chargeable. They also knew the exact number not in the hands of the men, but in the hands of the Quartermaster Sergeant of each company. In other words, the officers knew when the firing ceased that night the exact number of cartridges that should be found in the storeroom and in the possession of the men of the respective companies. They also knew the exact number of rifles and revolvers with which each company was chargeable. They also knew the exact number of men to be accounted for in each company.

As soon as the companies were formed the men were verified, and every man was present or accounted for, and the next morning, as soon as it was light enough, the guns and ammunition were inspected, and it was found that not a cartridge was missing, and not a rifle was unclean, or showed any evidences whatever of powder stain, or of having been fired. (Applause.)

All this coupled with the fact that every man has denied guilt and guilty knowledge, and has accounted for himself in such a way as to thoroughly satisfy his officers and to defy examination and cross-examination intended to confuse and destroy his statement, ought to be enough to acquit him in the absence of conclusive testimony to the contrary. (Applause.)

There is no such testimony to the contrary. All testimony so far taken against the soldiers may be divided into two classes; that of so-called eyewitnesses and circumstantial evidence.

The testimony of the "eyewitnesses" is, I venture to say, the most unreliable on which a conviction was ever predicated in the history of our country.

Major Penrose and all of his officers testify that the night was so dark that you could not distinguish a colored soldier from a white officer at the distance of ten feet, and yet these "eyewitnesses" testify that, looking out from their houses into the darkness of such a night, they were able, without the help of artificial light, except the flashes of the guns, to see the raiders, and at distances ranging all the way from thirty to two hundred feet distinguish them as negroes dressed in the uniform of soldiers and carrying the rifles the soldiers used. Some of the witnesses were able, according to their testimony, to tell in detail how the soldiers were dressed, even to the color of the shirts they wore.

Two of them testified that by the flashes of the guns they could see that one of the soldiers had spots on his face, and another testified that he could see the "blue barrels" of their guns, although the rifles with which the soldiers were at that time armed were so constructed that the barrels were entirely covered with wood to a point within three or four inches of the muzzle. (Applause.)

I haven't time to answer here tonight such trash, for it isn't anything else, beyond saying that anybody can see for himself by simply looking across the street any ordinarily dark night at a passer-by on the opposite side, and learning thereby that, unless the party pass under an artificial light, it is utterly impossible to tell whether he is white or black, old or young, soldier or citizen, armed or unarmed. But what is within the power of every one thus to learn is established by the testimony that has been taken not only of the officers of the battalion, but by officers who made careful tests not only to determine at what distances the color and dress of men might be distinguished, but also to show that the flashes from the high power rifles with which these soldiers were armed are so instantaneous and give so little light that it is utterly impossible to recognize anyone in the dark by that kind of help.

The other class of testimony, the circumstantial testimony, as I have called it, consisted of shells and clips and cartridges found in the streets of Brownsville the next morning after the firing, and a few bullets that were subsequently taken from houses into which they had been fired. All these corresponded in character to the shells and clips and cartridges and bullets with which the soldiers were supplied, and made such an impression on the minds of the officers of the battalion as to cause them, or at least most of them, to conclude reluctantly that some of the men must have done the firing. They remained of that opinion, although somewhat shaken in it by developments, and the passing of time without discovering any proof of guilt other than that, until, during the progress of the Senate investigation, the War Department laid before the Senate Committee a report of what is called in the *Record*, "The Microscopic Inspection" of the exploded shells that had been picked up in the streets of Brownsville.

I can not here go at length into an explanation of the character of this inspection. It would take too much time; but I can show enough in regard to it for present purposes by the simple statement that according to this report the results of the microscopic inspection showed conclusively, by the marks on the exploded shells, that they had been fired out of certain guns belonging to B Company. The report gave the numbers of these guns. It explained the character of investigation that had been made with a microscope, and pointed out with great minuteness the indentations made by the firing pins on the heads of the exploded shells and showed, by comparison with shells they exploded, from what guns they had been fired. The case thus made seemed to me conclusive, as the War Department stated it was, and I have no doubt now but what the guns thus named were the guns out of which those shells picked up in the streets of Brownsville had been fired.

The next step, therefore, was to identify the men who were responsible for these guns. That was easy. The records of the company

showed which men were chargeable with the possession of these guns on that night. All these guns were thus located except only one. All the men chargeable with these guns were brought before the committee, and each man accounted for himself and his gun on that night beyond the possibility of doubt or question by anybody. Not one of these guns with which they were chargeable could have been fired in Brownsville that night. This left only one other gun to be accounted for, and that was found, not in the hands of a soldier, or any other individual, on that fateful night, but in an arm chest, located in the storeroom with a lot of heavy baggage piled on top of it, and the storeroom locked. It had been placed in that arm chest at Fort Niobrara before the company left there for Brownsville, and there the arm chest containing it and nine other rifles was closed and securely fastened, and not again opened until the company commander undertook to verify his rifles and locate each and every one of them immediately after the firing occurred. That rifle never was fired, except only at Fort Niobrara. It never was in the possession of any soldier of the battalion except only at Fort Niobrara, where it was issued to Sergeant Blaney and carried, and used by him in target practice* until he re-enlisted and took his re-enlisting furlough shortly before the company went to Brownsville, when he turned in his rifle to the Quartermaster-Sergeant, who put a paper with his name on it in the magazine of the rifle, smeared the rifle with cosmoline to protect it from rust, placed it in the arm chest with other surplus rifles, where it was found when the chest was opened by Lieutenant Lawrason the night of the firing, and where it continued to remain until the battalion reached Fort Reno where, when Sergeant Blaney returned from his furlough it was taken from the chest and returned to him.

I might dwell upon other facts established by the testimony to show that the so-called circumstantial evidence, instead of convicting the soldiers, absolutely acquits them. But I haven't time and it isn't necessary, for if what I have mentioned is not sufficient to acquit these men to the satisfaction of any mind, it is simply because there is something the matter with that mind. (Applause.)

It was upon such testimony as this that the officers of the battalion who, when the charge was first made, believed their men were innocent, then reluctantly concluded, before this circumstantial evidence was explained, that some of their men must have been guilty, finally changed

* Before this microscopic investigation was made or any such question was foreseen, it was established by uncontradicted testimony that Company B took with it to Brownsville as a part of its baggage a box containing from 1,600 to 2,000 exploded shells, with a proportionate number of clips, and that after arrival at Brownsville this box, opened, stood on the back porch of B barracks, where anyone passing might have access to it and remove shells and clips from it. The microscopic report says that the shells picked up in the streets of Brownsville and put in evidence were, beyond a reasonable doubt, fired out of these four guns belonging to B Company. If so, then it also follows that they were fired, not in Brownsville, but at Fort Niobrara, and that they were found in the streets, not because they fell there when fired, but because they had been placed there by persons unknown, who had secured them from this box of shells standing on the back porch and easily accessible to anyone disposed to remove them therefrom. In other words, the microscopic inspection shows conclusively, not that the soldiers were guilty of the firing, but that the soldiers were free from such guilt. (Minority Report.)

their opinions, and are now of one mind that none of their men had anything whatever to do with the shooting up of Brownsville. (Applause.)

In view of the lateness of the hour, I will not pursue this subject further, except only to say beyond investigating as to the guilt or innocence of the soldiers, I have made no effort, neither has any one else, to find out who did shoot up Brownsville. If the soldiers did not do it, and I am sure they did not, I am not concerned as to who may have done it. No court ever required, at least not without committing error, that a defendant charged with crime should go with his proof beyond showing that he was not guilty, and, also show, to acquit himself, who was guilty.

I might turn away from this subject at this point, but one or two other thoughts come into my mind, and I must speak of them.

One of your speakers spoke of the fact that the Government has been pursuing these men with detectives to find the perpetrators. That is true. Recent developments in the Senate have established the fact that the authorities spent at least fifteen thousand (\$15,000) dollars, in payment to detectives to pursue these men, and if possible find some evidence of their guilt. But so far they have found nothing. The trouble is, they are not looking in the right place. (Applause.) While they have spent fifteen thousand dollars to convict the soldiers, they have not spent fifteen cents to convict anybody else. I do not think it would take half of fifteen thousand dollars to find the fellows who shot up the town, if they would look for them in the right place. (Applause.)

But now, speaking to you about these men. The Committee on Military Affairs of the Senate was ordered to conduct an investigation. I shall never forget how those men impressed me, as they were brought into that committee room and examined and cross-examined in the presence of that committee; examined in the most rigid and exacting manner. Many of them had never been to the Capitol before; many of them were what you might call illiterate men; there was much to awe them and confuse them in what they had to meet. But as they marched into that room, one after another, each testifying for himself, and each accounting for his whereabouts to the satisfaction of every one, I shall never forget the impression they made. They demonstrated the majesty and overwhelming power and force of simple truth, for they had nothing in their favor except only the truth, but with that they met successfully all the efforts of this great, mighty Government. (Applause.)

Now you give me praise for the result. But there are two colored men I ought to mention here, who gave me great help, and I hope I can do this without exciting any jealousy. They were Mr. N. B. Marshall of this city, and Mr. Gilchrist Stewart of New York. They labored as faithfully as any two men ever labored in any cause, in helping to bring the facts before that committee in a way calculated to present the cause to its best advantage. I must mention others. On that committee was General Morgan G. Bulkeley of Connecticut, who ought to have a loving cup, or something equally good. (Applause.) I love him as though he were my brother. And there were two others who should be mentioned. Senators Scott of West Virginia, and Hemenway of Indiana. They all helped, and I wish they were here tonight to receive your thanks for the contribution they made to the success that has finally been wrought. Governor Bulkeley, who served in the Civil War, made a splendid record

on the fighting line. He was born of the political conditions of that great period when Abraham Lincoln conducted the affairs of the country, and when the American people were purified in the fires of battle. He is still in the Senate. I hope he will remain there as long as he lives. When you want to give somebody else a loving cup, present Senator Bulkeley with one. (Applause.) I am really ashamed to take this without something being done for the other three Senators who stood by the soldiers on that committee. (Applause.)

I have said that I do not believe that a man in that battalion had anything to do with the shooting up of "Brownsville," but whether any one of them had, it was our duty to ourselves as a great, strong and powerful nation to give every man a hearing, to deal fairly and squarely with every man; to see to it that justice was done to him; that he should be heard.

They are now to be heard before a Court of Inquiry. I do not know what the result will be, but I do not believe any man in the battalion fears investigation, or that any man will be found disqualified to re-enlist. I do not know whether the men want to go back in the army or not. I have not asked them. That is for them to determine. My purpose was to see that they had a chance to defend themselves. In the second place to restore to the innocent all their rights and give them the privilege of re-enlisting in the uniform that had been taken off them in disgrace, and that has been accomplished. (Applause.)

Henceforth the Brownsville matter will take care of itself.

When I made these remarks two and one-half years had passed since the shooting was done. During practically every hour of that period, both by day and night, the men had been under surveillance. They had been examined and cross-examined; they had been investigated by tribunals before which, as, for instance, the Grand Jury of Cameron County, Texas, they did not appear. They had been pursued by hired detectives, who had resorted to all kinds of disreputable practices to entrap them and in some manner get from some one of them some kind of incriminating statement. But they had gone through it all unscathed. Only the panoply of truth and innocence could have so protected them.

As I spoke they were on the eve of another year of the same kind of bedevilment and harassment and suspicion and mistreatment and outrage at the hands of a body created for the purpose of making an unbiased investigation of charges involving, on the one hand, the honor of the Army and the honor of the Nation, and on the other, life, liberty and property rights of great value.

No one hundred and sixty-seven men ever lived who could have withstood successfully such efforts to unearth the truth about such a crime if they had been the parties who had committed it, or had possession of knowledge with respect thereto which they were attempting to withhold.

It is now (July, 1915), nine years, almost, since that fateful night. I do not know how much effort has been made to find some one of these poor, hapless men guilty of participation in that affray since the Court of Inquiry completed its shameful work, but I do know that now, after the lapse of this long period of time, not one single particle of testimony has ever yet been produced to identify any man who was a member of that battalion with that affray; and I feel that I hazard nothing in saying that not one particle of testimony to such an effect ever will be produced. Neither do I doubt if the Government had spent the one-tenth part to discover the men who shot up Brownsville that it did spend to convict its innocent soldiers of a crime they never committed, the truth would have been easily and long ago established.

Since the first edition was published an article has been recalled to my attention that was published by *McClure's Magazine* for April, 1909, entitled "Cleveland's Opinions of Men," by George F. Parker, an English magazine writer, who was at that time visiting our country, from which, with what is, I trust, under all the circumstances, only pardonable pleasure, I quote as follows:

"When I told him (ex-President Cleveland) that I expected soon to see Senator Foraker in Washington, he said 'I have not known of anything for years which has pleased me more than the Ohio Senator's attitude upon current public questions. Whatever may be the whole truth about the Brownsville case, it has been a display of genuine courage for a Republican Senator to take the position assumed by Mr. Foraker. It is due to him that there has been a real discussion of the President's action in all its bearings. I have, too, been keenly interested in the profound contributions made by the Senator to the debate on the Rate Bill. It has been an enormous advantage to sane public opinion to have a protest take the form of such a complete and effective legal argument, and that, too, on a side decidedly unpopular.'"

CHAPTER XLIV.

THE HEARST-STANDARD OIL LETTERS.

THE Honorable Champ Clark was right in saying that the Brownsville affray put me out of the 1908 race for the Presidency, but he was wrong in saying it also put me out of the Senate.

It destroyed whatever chance I might otherwise have had for the Presidential nomination, however, not because my course with respect to it was either wrong or unpopular, for the exact opposite was true, but because it made President Roosevelt, then at the height of his popularity and power, openly and actively hostile.

He was strong enough to nominate William H. Taft, not only in preference to me, but also in preference to all the other candidates, among whom were some of the strongest and most popular leaders of the Republican Party.

He was not strong enough, however, to defeat me on that account for re-election to the Senate. My defeat was due to another cause.

After Taft's nomination for the Presidency there was all over the State of Ohio a manifestation of sentiment in favor of my re-election. This sentiment was strong enough to have overcome the combined opposition of both Roosevelt and Taft, notwithstanding they represented two administrations, the outgoing and the incoming; and this was daily becoming more and more apparent, when, like a flash, the whole situation was changed by a speech made by Mr. William R. Hearst, at Columbus, Ohio, on the evening of September 17, 1908, in which, to make it appear that I had some kind of improper relations with the Standard Oil Company, he read a number of stolen letters to me from Mr. John D. Archbold of that

company, showing payments to me at different times of various sums of money.

I did not have the faintest warning that any such thing was to occur, but at once, in the afternoon papers of the 18th, I answered as follows:

SENATOR FORAKER'S ANSWER.

I do not know whether the letters given out by Mr. Hearst are true copies or not, but I assume they are, for I was then engaged in the practice of the law and was employed by the Standard Oil Co. as one of its counsel in connection with its affairs in Ohio, where it was attacked in the courts and in the Legislature.

While I do not now recall the details, I remember that I rendered the company such service as I could, charged for it and was paid.

The employment had no reference whatever to anything pending in Congress, or to anything in which the Federal Government had the slightest interest.

That I was so employed, and presumably compensated for my services, was common knowledge at the time; at least I never made any effort to conceal the fact. On the contrary, I was pleased to have people know that I had such clients.

It had not then become discreditable, but was considered just the reverse to be employed by such corporations.

That employment ended before my first term in the Senate expired. I have not represented the company in any way since. In other words, I have not represented the company in any way since long before it was attacked by the Federal Government, nor since, before, with full general knowledge I was re-elected to the Senate.

The following night, September 18th, he spoke again at St. Louis, and there renewed his attacks, referring to me as follows:

Mr. Foraker . . . replies in a characteristic manner. He practically admits he did serve the Standard Oil Co., and that he is glad of it. He is different from Mr. Haskell. He admits part of the truth, but not all of it. His statement is based on letters I read last night. If he had seen the letters I am going to read tonight, he would have denied the whole matter.

Evidently measuring my standard of morals by his own. The newspaper account then proceeds as follows:

Mr. Hearst then read the following letter:

26 Broadway, January 27, 1902.

My Dear Senator:—Responding to your favor of the 25th, it gives me pleasure to hand you herewith certificate of deposit, \$50,000, in accord-

ance with our understanding. Your letter states the conditions correctly, and I trust that the transaction will be successfully consummated.

Yours very truly,

JOHN D. ARCHBOLD.

The newspaper account then further proceeds as follows:

Immediately after reading this letter Mr. Hearst read the following letter addressed to Senator Foraker by John D. Archbold:

26 Broadway, February 25, 1902.

TO HON. J. B. FORAKER, Washington, D. C.

Again, my dear Senator, I venture to write you a word regarding the bill introduced by Senator Jones of Arkansas, known as S. 649, intended to amend the act to protect trade and commerce against unlawful restraints and monopolies, etc., introduced by him December 4th. It really seems as though this bill is very unnecessarily severe, and even vicious. Is it not much better to test the application of the Sherman law instead of resorting to a measure of this kind? I hope you will feel so about it, and I will be greatly pleased to have a word from you on the subject. The bill is, I believe, still in committee.

With kind regards, very truly yours,

JOHN D. ARCHBOLD.

After reading this last letter Mr. Hearst commented, according to the newspapers, as follows:

The bill referred to in this letter is one introduced by Senator Jones of Arkansas, in the United States Senate. Consequently, Mr. Foraker's statement does not convince when he said (*referring to my statement in answer to his Columbus attack*) the correspondence had nothing to do with any legislation in Congress.

To this I made the following answer in the afternoon papers of the 19th:

The production by Mr. Hearst of the letter of Mr. Archbold to me, dated January 27, 1902, referring to a certificate of deposit inclosed for \$50,000, and expressing the hope that the transaction may be satisfactorily concluded, illustrates how unreliable is the memory and how easily appearances may deceive.

When I first read the letter I could not recall that I had ever received any such letter or any such certificate. I at once called up my house in Washington, where my letters of that date are on file, and had a search made, with the result that a proposed transaction was recalled that had gone entirely out of my mind.

A friend of mine, a newspaper man,* informed me that he held an

* Mr. J. Linn Rodgers of Columbus, O. I omitted his name because he was in the Consular Service and I feared if I named him it might work him some injury. I explained all this in my testimony before the Senate Sub-Committee on Campaign Contributions (page 1287) given December 18, 1912.

option on the *Ohio State Journal* to purchase it, according to my present recollection, for \$135,000. He was able himself to advance but a small amount of this purchase price. He applied to me to help him. I did not have enough money to be of very material assistance, but for the sake of having the paper in friendly hands I was willing to advance a part of it. I applied to a number of friends to see if they would not make up the balance of the amount. Among others, I applied to the Standard Oil Co. They first agreed to loan the newspaper company, when purchased and reorganized, \$35,000, according to my present recollection, the same to be secured by stock of the newspaper company. Somebody who was expected to go into the enterprise dropped out, and that made it necessary for all the others to increase the amounts they were proposing to advance. At the request of my friend I asked the different parties to increase their advances, and thereupon the Standard Oil Co. did accordingly increase their amount from \$35,000 to \$50,000, and sent me the letter with the certificate inclosed, as stated. It was thought at that time that the transaction would be immediately closed, but there was a delay of a few days, and at the end of that delay the whole transaction fell to the ground, because other people had stepped in and purchased the property. Thereupon I returned the draft to the Standard Oil Co. I had no employment in the matter and never derived a cent of profit from it, and never made any charge on account of it to anybody. I am at the disadvantage of not being able to produce this correspondence, because it is on my files in Washington, and I can not get at it for the present, but I am confident that when I am able to produce it it will be found to be in exact accord with my statement.

I do not remember to have received the letter relating to the bill introduced by Senator Jones of Arkansas, but whether I received such a letter or not, it had no reference to any employment of any kind from the Standard Oil Co. or anybody else; nor did the letters about Smith Bennett and Judge Burkett, read by Mr. Hearst at Columbus, have any reference to any employment. I favored the nomination of Mr. Bennett, notwithstanding Mr. Archbold's objection to him, and would have favored Judge Burkett's nomination if I had not heard from Mr. Archbold. Judge Burkett was a personal, as well as political friend of many years' standing, and I favored him the first time he was nominated, which was long before I knew Mr. Archbold. I can only repeat that the only employment I ever had by the Standard Oil Co. was, as set forth in my statement published yesterday, as advisory counsel with respect to their affairs in Ohio.

It will be remembered that the Standard Oil Trust was first sued and a decree of dissolution was entered in the Supreme Court, which made it necessary for the company to reorganize. Difficulties arose in carrying out that decree, which delayed their reorganization, and proceedings were instituted against them by Attorney General Monnett, in the Supreme Court, to enforce the former decree and for other relief. It was then that I was employed, not to participate in the litigation, which was in the hands of competent counsel, but to investigate the whole situation, the records in the cases, the statutes of Ohio applicable to the company and the case against it, the decree of the court and all the records in the case, with a view to advising the company how, in my opinion, it could most safely proceed to comply with the orders of the court and conform to our statute and so reorganize as not to violate any

law or any judgments. This work involved frequent consultations with the attorneys of the company, the examination of voluminous records, the judgments and decrees of the court, and a general study of what was best to be done, not to evade the law and the decree of the courts, but to comply with the same.

Nothing connected with this work had relation to anything whatever pending in Congress or to any matter in which the National Government was interested in the slightest degree, nor did anything connected with the employment relate to or conflict with any duty of mine as a Senator.

The company finally concluded, as a result of all the investigations and consultations and advice, to reorganize under the laws of the State of New Jersey, and then, with the closing up of the Ohio business, my services ended. I have never had any relation whatever to the company since.

Any letters Mr. Archbold may have written me on any subject since that time have been written only as any citizen might write to any legislator with whom he was acquainted concerning pending legislation that affected him or his interests, and from the time my service ended I have never been under any obligation to the company nor the company under any obligation to me.

Neither the Standard Oil Co. nor any other company or individual has ever paid me a cent on account of any public service, nor has that company or anybody else ever even suggested to me any compensation or reward of any kind in consideration of support for any bill or opposition to any bill, or for any action of any nature whatever.

Since dictating the foregoing my clerk has found and read to me over the telephone the following letter, which is confirmatory of what I have said about returning the \$50,000:

WASHINGTON, D. C., February 4, 1902.

Dear Mr. Archbold:—I very greatly regret to have to inform you that the proposed transaction at Columbus has failed; at least for the present.

It may be revived later, but I doubt if I shall care to bother about it any more. However that may be, I herewith send you, with many thanks for your kindness in the matter, New York draft for \$50,000, payable to your order, as repayment of the money advanced by you on the above-mentioned account.

Kindly acknowledge receipt of same and oblige,

Very truly yours, etc.,

J. B. FORAKER.

I afterward learned that the date of this letter was not the 4th, as I understood over the telephone, but the 14th.

Mr. Hearst was on a general speaking tour, in which he visited and spoke at Denver, and other points in the West and in the South. In almost every speech he renewed his attacks in one form or another. I promptly continued to meet them, frankly, fully, thoroughly and conclusively, as I thought then and still think.

How the controversy would have ended if it had been left to him and me alone is of necessity only speculation. But the flood of letters and telegrams that commenced to pour in upon me from every direction from other States as well as from Ohio were of the most encouraging character. The flood continued until President Roosevelt gave out an interview of such hostile character, and President Taft assumed such an attitude of opposition, if not of hostility, that, for political reasons, as a matter of policy, rather than because anybody had changed his mind on the subject, the tide again turned against me.

I answered President Roosevelt and also Mr. Hearst's later attacks down to date by publishing the following in the newspapers of September 26, 1908:

FORAKER'S ANSWER.

The President commences his statement connected with the publication of Judge Taft's letter with a bitter arraignment of me because of Mr. Hearst's charges, which he appears to have accepted as fully proved as soon as made. He does not wait for proof or explanation, nor accept the same when offered.

Mr. Hearst's charges are not simply that I was in the employment of the Standard Oil Co. and that I was paid for my services, but that I was secretly in that employment for illegitimate purposes, and that the money I received was paid as compensation for improperly influencing legislation by Congress in conflict with and in violation of my official duties.

He read a number of letters and made certain comments calculated, if unanswered or unexplained, to create the belief that his charges were true.

That I was employed by the company was never concealed or denied. On the contrary, such employment was well known at the time to all concerned. Only a few days ago ex-Attorney General Monnett, who was prosecuting the proceedings against the Standard Oil Co., stated in a public interview that I told him at the time that I had been retained by the company.

If employed and rendering services, presumably I was compensated.

In announcing, therefore, the mere fact that I was employed by the company and showing that I received payments on that account, no information was imparted by Mr. Hearst and no offense was established, for it remained that such employment and payment might be entirely proper and legitimate.

Under all the circumstances an explanation was required, and in former statements I made such explanation, by showing that my employment was confined to the affairs of the company in Ohio and its reorganization after the trust was dissolved by order of our Supreme Court, and that my employment had no relation in the slightest degree to anything

in which the Federal Government was then interested, or with respect to which the Congress was then legislating, or at that time proposing to legislate, and that the employment was ended long before the company was made the subject of any special attention in Congress, and longer still before it was attacked in the Federal courts or proceeded against in any way by the Federal Government; and further, that the employment was not to defend the company against charges of violation of the laws of Ohio or the United States, or the orders of any of the courts, but only to assist in so executing the orders of the courts and so reorganizing as to conform to all laws, State and National, and to fully comply with all the orders of the courts that had been made against it.

If my statements in this behalf are true, they make a complete defense against Mr. Hearst's charges and all deductions therefrom of improper conduct, unless the ethics involved have been radically changed from what they have always heretofore been supposed to be.

From the beginning of our Government Senators and Congressmen who were lawyers have been regarded as free to continue the practice of their profession if they so desired during their terms of office, in so far as they might be able to do so without interfering with their public duties; and in such practice free to take any kind of employment that was offered which did not in any way conflict with their duties as Members of Congress. Nobody has ever before been criticised on such account. The only question has been as to the character of business a Senator or Member of Congress was at liberty to take, and uniformly and universally it has been considered that there was no prohibition of any class of business outside those named in the statutes and such business as might conflict with public duties.

When I accepted the employment of the Standard Oil Co. in 1899 (should be December, 1898), it was not foreseen by me, and probably not by anybody else, that it would become the object of Federal legislation or of Federal prosecution or action of any kind, and that employment ended when the company decided to reorganize under the laws of New Jersey, which was before anything of that nature occurred.

THE ELKINS LAW.

That I was not in the employment of the company after the services I have mentioned were rendered, and that such employment did not afterwards influence me to favor the company in legislation is shown by the part I took in the enactment of the Elkins law, approved February 19, 1903. Under this statute the Attorney General has brought and caused to be brought all the prosecutions against the Standard Oil Co. of which we have read so much, including the case in which Judge Landis imposed the fine of \$29,240,000.

I was one of the sub-committee of three—Senators Elkins and Clapp being the other two members—who considered that bill in the Interstate Commerce Committee of the Senate, and after making such amendments as in our judgment made it more effective, reported it favorably to the committee and then to the Senate, where it was passed. Under this Elkins law, for the first time in interstate commerce legislation, the shippers were made liable as violators of law and subject to heavy penalties for accepting or soliciting rebates or discriminations.

Until that time only the carriers were liable for such offenses. The bill was especially aimed at the large corporations, because they were supposed, by reason of their large shipments, to be able to command and enforce rebates and discriminations, which could not be secured by their weaker competitors. That statute has been put to the severest tests, and they have shown that it is worth more in the regulation of interstate commerce than all the other statutes that have been enacted. It makes effective all the other provisions of law against rebates and discriminations, and nobody has suffered more under it than the Standard Oil Co., against which indictments have been found by scores, containing counts and charges amounting to thousands in numbers.

Much more might be said as to the character of this statute, but it is unnecessary for present purposes.

I refer to it and speak of its general character only to show that this legislation, which I helped to frame and to enact aimed directly at the Standard Oil Co. and the other great corporations is, or ought to be, convincing evidence that I was not employed by the company at that time, and that I was not influenced in the discharge of my public duties by reason of the employment that had ended long before.

DECLINES RE-EMPLOYMENT.

But if that fact is not sufficient the following correspondence is not only additional proof, but conclusive in its character, to the same effect:

26 BROADWAY, NEW YORK, May 7, 1906.

My Dear Senator:—In the possibility of an action being brought against us in Ohio, are you in position to accept a retainer from us in connection with such a matter? Your early response will oblige,

Yours very truly,

To HON. J. B. FORAKER,

JOHN D. ARCHBOLD.

1500 Sixteenth Street, N. W., Washington, D. C.

To which I answered as follows:

WASHINGTON, D. C., May 9, 1906.

JOHN D. ARCHBOLD, Esq.,

26 Broadway, New York.

My Dear Sir:—My duties in the Senate have so multiplied that I found it necessary to retire entirely from the practice of the law. I have not taken any new employment for more than two years past.

On this account, as well as because of my relations to the public service, I can not accept a retainer in the contingency named, as I would be very glad to do if it were otherwise.

Assuring you of my proper appreciation for the compliment involved in the inquiry you make,

I remain very truly yours, etc.,

J. B. FORAKER.

For weeks prior to the date of these letters the newspapers were filled with announcements threatening the company with very serious litigation and with criminal prosecutions in the courts of Ohio. It was in view of

these threatening proceedings that the company again sought to employ me, surely an idle and unnecessary performance if already employed, and these letters further show that I declined such employment, among other reasons, because I could not accept the same consistently with my relations to the public service.

The conditions had greatly changed since my former employment, largely because of the prosecutions against the company under the Elkins law, which I had helped to frame. Furthermore, the employment proposed was different in its character from that which I had previously accepted. That is to say, instead of being an employment, as the former employment was, to aid the company in complying with the orders of the courts and the statutes of the State, it was to be an employment to resist suits and prosecutions instituted by the State.

I submit that these proofs should be sufficient to show to any fair and unprejudiced mind that I was never employed except prior to 1901 and that my employment then had no relation to anything that was in conflict with my public duties, but had reference solely to the reorganization of the company and its Ohio affairs, with which Congress had nothing whatever to do.

THE PRICE BILLS.

Until now I have not made any statement about the letter Mr. Hearst read at Columbus from Mr. Archbold to me, dated March 9, 1900, calling my attention to two bills introduced in the Ohio Legislature by Mr. Price. I have delayed saying anything about this letter, because, having no recollection on the subject, I have been trying to ascertain, if I received the letter, what I did with it or did on account of it. I can not find any trace of such a letter on my files or of any answer in my letter book. I have not been able to communicate with Mr. Price, who introduced the bills mentioned, but he has stated in a public interview that he abandoned the bills because Governor Nash told him that Senator Hanna and I were both opposed to the measures, and that we feared it might damage President McKinley's interests in the national campaign upon which we were then entering if their passage should be insisted upon.

Mr. Price's statement suggests to my mind that in all probability I referred the letter to Governor Nash. I do not know of any other way, if I ever received it, to account for its absence from my files, which are carefully kept. Such a disposition of the letter would be in accordance with what is usually done with all such communications.

In any event, I know that I took no action with respect to it, nor on my own motion with respect to any other bill pending in the Ohio Legislature at that time or at any other time since I became a Member of the Senate, March 4, 1897.

In no instance since that date have I sought in any way to influence legislation at Columbus, except when applied to for my opinion by some member, as has happened a few times, and never before March 4, 1897, except only by arguments before open meetings of the regular committees.

While I have occasionally heard from Mr. Archbold during the period that has elapsed since the termination of my employment in the early

part of 1901, I do not recall receiving any letter from him except, if I received it, the one relating to the Jones bill, which had any reference to legislation pending in Congress or to anything with respect to which I had any official duty to perform, until he wrote me the letter of May 7, 1906, proposing a re-employment with respect to the suits and prosecutions threatened in Ohio. In any event, he never addressed me on any subject, since my employment, except only as any other citizen with whom I was acquainted might have done, and there was never a suggestion from him, or from anybody else, that I was under the slightest obligation to support or oppose any proposed legislation on behalf of that company; nor was there ever a suggestion by anybody that I should receive any compensation or reward of any kind whatsoever on that account.

And what is true in this respect as to the Standard Oil Co. is also and equally true as to every other trust, corporation or person. Notwithstanding what the President says in his answer to Mr. Bryan, of September 23, that I was the representative and champion and defender of corporations in the Senate, there is not a word of truth in any such statement, whether made by him or anybody else, and there is not a scrap of evidence that can be produced supporting any such charge that can not be as fully and satisfactorily explained as has been explained the letter about the Jones bill and the proposed purchase of the *Ohio State Journal*. . . .

Just as I was closing the foregoing statement I received through the mail, unsolicited, the following letter from Mr. M. W. Hissey:

COLUMBUS, OHIO, September 24, 1908.

HON. J. B. FORAKER, Cincinnati, Ohio.

My Dear Senator:—Noticing the recent newspaper statement about two bills relating to corporations introduced in the Ohio General Assembly in the year 1900 by Hon. Aaron Price of Athens, and his statement that they were presented at the request of the late Governor Nash, I beg to state that I was present at the session of the General Assembly, engaged in watching legislation; that I personally consulted with Governor Nash as to the propriety and wisdom of these bills becoming laws, and he agreed with me that it was not wise to press these measures at that time, and, with his consent, they were not passed.

I had no consultation with you in this matter and final action was in no wise influenced by you.

I make this statement in justice to you and in order that history may be clear and accurate. With best wishes,

Yours, etc.,

M. W. HISSEY.

Mr. Hissey was always an ardent adherent of Senator Hanna, and "was present at that session of the General Assembly," as he states, "engaged in watching legislation," probably at the request of Senator Hanna; certainly not at my request, for I never at any time had any one present at any session of any General Assembly "watching legislation," or for any other purposes.

Omitting some comments on Taft and Roosevelt, I closed my statement as follows:

If in making this defense I have said anything that will work the slightest injury to the Republican Party, I shall regret it, but I shall always feel that those who have no consideration for me, my family or good name, but would gloatingly rejoice if they could accomplish the shame and humiliation they have attempted, are not entitled to any consideration at my hands, and that my duty to the party should be subordinated to my duty to family and the good name I have striven to make that I may leave it to them as their heritage, more priceless in their estimation than anything else within my power to give them.

A few days later, October 2, 1908, I published the following:

The questions in this whole matter in which the public is concerned are:

1. Whether I was employed, which was never concealed or denied; and,

2. The character of that employment—whether it had any relation to my duties as Senator or influenced me in any manner in regard thereto.

On all these points I have answered fully in my former published statements.

I have not until now spoken of the compensation I received, because if the employment was improper it would be no defense to show that it was a small sum, and if, on the other hand, the employment was proper, the compensation concerned only the company and myself—nobody else. If my former statements are true, as I know them to be, the employment was entirely proper and legitimate, and therefore the question of compensation is one I do not feel called upon to discuss with Mr. Hearst.

In view, however, of the important character of the services rendered, the ability of the company to pay, and, if it may be considered, although unforeseen, the disagreeable experience to which I am subjected, I think it would be difficult for Mr. Hearst to show that I was overpaid, but if he should, that would be a matter for the company to complain about and not Mr. Hearst.

For the benefit of those who may not have read my former statements, I repeat that my employment was confined to the affairs of the company in Ohio, including its reorganization after the decision of our Supreme Court dissolving the trust, and that it was ended long before the company had become in any way the object of legislation by Congress or the subject of attacks of any kind in the courts or otherwise by the United States Government and before any such legislation by Congress or any proceeding by the United States Government against the company was proposed or foreseen, and that such employment has never been renewed, although, as heretofore shown, again tendered and declined in 1906.

If I did not have a right to accept that employment, I should probably be criticised for having been for years employed by the Ohio Traction Co. on the ground that while such employment has no relation

to my duties in Congress, yet in some way now unforeseen the company may be subjected hereafter to legislation by Congress or to Federal procedure against it; or perhaps I should be condemned for once representing the General Electric Co., although that was before I was elected to the Senate, or the Cincinnati Telephone Co., by which I was employed for many years before and for some time after I was elected to the Senate, because it is a branch of the Bell Telephone Co., and these companies—the General Electric and the Bell Telephone Co.—have now been charged, according to the newspapers, with a violation of the anti-trust laws and are to be civilly and criminally proceeded against by the Attorney General of the United States.

When I was employed by the Standard Oil Co. there was no more knowledge or probability of that company being legislated about by Congress or proceeded against in the Federal courts, so far as anybody was then aware, than there was and has been as to the other companies named at the times when I respectively represented them. If such mere possibilities are to bar employment, then no Member of Congress can safely act as attorney in any case, and every one should immediately close his law office. No such rule has ever heretofore obtained, and there is no reason why any such rule should obtain. All lawyers at least fully understand that when a professional service has been rendered and has been paid for all obligation ceases on both sides, and that no lawyer is bound by reason of a previous employment to show any favor at any subsequent time as attorney, public official or otherwise to any one who may have been his client.

Finally, if I committed any offense against the law, let somebody specifically point it out and proceed against me. The courts are open, and although they have been severely criticised, yet the people have confidence in them and will accept and be satisfied with their judgments. If there be any just basis for this reckless, wholesale defamation and attempted assassination of character, let it take some tangible, open, and fair form of procedure, where all interested can appear and be fully heard.

Next came the following correspondence with Mr. Virgil P. Kline, who was General Counsel for the Standard Oil Company, and who had employed me to assist him, and who was familiar with my services throughout.

Mr. Kline is a Democrat in politics. He is a man of the highest character. No man acquainted with him personally, or with his reputation at the bar, and with his fellow men, would, for one moment, question any statement he might make.

CINCINNATI, October 5, 1908.

VIRGIL P. KLINE, ESQ., Cleveland, Ohio.

Dear Sir:—In view of the charges of Mr. Hearst and the discussion now going on in the newspapers as to the character of my employment by the Standard Oil Co. and the services I rendered under such employ-

ment, I would be glad if you would write me in regard thereto, and give me permission to use your letter if occasion should seem to require it. I make this request because I was employed by you personally, and because you are entirely familiar with the scope of that employment, the services rendered, and, in short, the whole subject, and because, under the circumstances, I prefer that you rather than myself should speak on these points.

With assurances of continued regard, I remain,

Very truly yours, etc.

J. B. FORAKER.

KLINE, TOLLES & GOFF,
1215 Williamson Building,

CLEVELAND, OHIO, October 6, 1908.

HON. JOSEPH B. FORAKER, Cincinnati, Ohio.

My Dear Sir:—I am just in receipt of yours of the 5th instant, asking me to write you in regard to your employment, with permission to use my letter if occasion should seem to require. With that request I am glad to comply.

In December, 1898, at the time you were employed by me, there was pending against the Standard Oil Co. in the Supreme Court of the State of Ohio, very serious and difficult litigation. A proceeding in contempt had been instituted by the Attorney General, charging that company with having willfully violated the order of the Supreme Court directing it to withdraw from the trust agreement. The company had answered, issues had been made up, and a considerable volume of testimony taken.

There was also pending against the Buckeye Pipe Line Co. a proceeding in quo warranto, charging it with being a member of a trust in violation of the anti-trust laws of the State; also a like proceeding against the Ohio Oil Co. and the Solar Refining Co., and one of a like character at that time, I think, threatened against the Standard Oil Co. of Ohio, and which was brought in January, 1899. These were so-called constituent companies of the Standard Oil trust.

These bills in quo warranto were all filed in the Supreme Court and asked for the revocation of the charters of the said several corporations, the appointment of receivers to take possession of the properties and the dissolution of the various companies. Many millions of dollars of property were thus involved in the litigation already pending, and much imperiled, in addition to the other litigation threatened.

It was in the midst of these difficult cases, with the very serious consequences incident to any adverse decision, that, with the approval of my client, I turned to you for assistance and advice.

The Standard Oil Co. of Ohio had endeavored in good faith to comply with the order of the Supreme Court. The trust certificate holders had, by a resolution passed at a meeting held in New York in March, 1892, determined not only that the Standard Oil Co. of Ohio should withdraw from the so-called trust agreement, but that the trust itself should be dissolved, and the trustees had entered in good faith upon the policy of a dissolution and a winding up of the entire trust.

Many practical difficulties presented themselves, as the trust certificates, of a par value of more than \$97,000,000, were held everywhere throughout the country, had been invested in by savings banks and trust companies, had passed from hand to hand in the market for ten years, were held in large and small amounts, and the effort to give the trust certificate holders a legal interest in the stock of the various companies that had formerly been in the trust was one of great difficulty.

I had, I remember, a prolonged interview with you when I first met you in connection with this business. Copies of the pleadings in the contempt case were shown you and the substance of the evidence already taken narrated, together with the action of the certificate holders taken at the meeting and the course of proceeding of the trustees carrying out the purpose of the resolution to dissolve the trust, and a little later certified copies of the voluminous pleadings in the four cases above named, and the interrogatories annexed thereto, directed to the officers of the four companies above named, were furnished, and the history of each one of those companies and the relation of each to the Standard Oil Co. of Ohio and of the other organizations alleged to be members of the trust (some twenty in number), became a subject of investigation at once by you. The importance of the litigation could hardly, from the standpoint of the Standard, be overrated.

The company in Ohio which had been ordered to withdraw from the trust agreement, could not afford to permit itself to be put, nor could the gentlemen who managed it permit themselves to be put, in the attitude of defying the law. A heavy fine might have been imposed, a receiver might have been appointed, and the vast business of the organization irreparably injured.

The three quo warranto cases then pending, and the fourth one threatened, as already stated, and later begun, called for most drastic action upon the part of the Supreme Court if its judgment should be adverse. It was asked, in each of the four quo warranto cases, and such was a proper prayer, that each of the four defendants be adjudged to have forfeited and surrendered their corporate rights and franchises, that they be dissolved, and that the court appoint trustees to wind up their affairs and distribute their property.

It was upon a realization of these serious and disastrous consequences, well knowing your ability as an attorney, and the respect lawyers and courts had for you throughout the State, that I sought your service. You entered at once actively upon the employment, making your own investigations here in Ohio and in New York, holding frequent consultations with myself and other counsel for the company in Columbus, Cincinnati, New York and Washington. Your judgment was sought, not only as to what had been done by the Standard Oil Co. of Ohio in its effort to withdraw from the trust, but also as to what form of future organization of the great interests of this company, and of the constituent companies, should be taken, that they might not be open to any further attack.

For more than a year testimony was taken at various places, full transcripts of that evidence furnished you, and suggestions received from you as to the lines upon which it ought to be met.

The testimony having been closed, the contempt case was finally submitted to the Supreme Court, and at the January Term, 1900 (the exact date I do not have before me), an entry was made by the court, finding the defendant not guilty of contempt and dismissing the proceedings.

A little later the four ouster cases were also dismissed, the dismissal of the latter cases being made by the court at the suggestion of the then Attorney General, Judge Sheets.

Your employment extended over a period of more than two years, during which time I was repeatedly in consultation with you, and there was no phase of the litigation of which you were not fully abreast all the time, and your counsel was fully appreciated by my associate counsel and by my client, and there never was a particle of effort upon our part to conceal your relation to the interests we represented.

So far from the attitude of the company being one of a desire to evade the law or the decree of the court, it had faithfully endeavored to comply therewith, and, so far as the Valentine trust law was concerned, we were not trying by subterfuge or indirection to evade it. You understood perfectly our desire, and co-operated with it, to put these large properties on a basis of conformity to the decree of the court and of the law, that they might be safely and securely held by their owners.

Your efforts greatly contributed to the success of the litigation and the preservation of the property by its owners. At the time of your employment and when it ceased, as it did, according to my recollection, somewhere about the 1st of January, 1901, there was no intimation from any source whatever of criticism or attack on the part of the Federal Government. That did not come for more than four years afterwards, and, so far as I know, and I have been intimately in touch with the litigation and troubles of the company for twenty years, and am still, nothing has ever been asked of or accepted by you inconsistent with your public duties, and so far as I know you have had no relation whatever to the company, as an attorney or otherwise, for more than seven years.

You may make any use of this letter you see fit.

With kindest regards, I am, very truly yours,

VIRGIL P. KLINE.

JUDGE WEST'S STATEMENT.

Hon. William H. West, one of the ablest lawyers, one of the most distinguished jurists and one of the most beloved men Ohio has ever produced, took pains to investigate thoroughly, without my knowledge that he was doing so, merely for his own satisfaction and in his own way, all the facts and circumstances referred to in my various statements, and thereupon prepared and published a pamphlet giving the results of his investigation in the form of a letter addressed to the General Assembly of Ohio.

In this letter he reviewed all the facts, closing his statement as follows:

CONCLUSION.

From the foregoing it logically and conclusively appears that at the time Senator Foraker's legal services were retained by Mr. Virgil P. Kline in December, 1898, the Standard Oil Company had not become the subject of legislative cognizance by the Congress, nor of judicial cognizance by the courts of the United States, nor was it judicially proceeded against in the said courts for more than four years after the Senator's said employment had terminated. It was an Ohio corporation prosecuted in the Ohio court. He was not an original counsel of record in the case and did not as such seek to defeat the action, that service having been performed by Ambassador Choate, but only sought to devise some means of enabling the company to comply with and obey the laws of the State and the decree of the court pronounced against it without sacrificing its great properties or the interests of the thousands of innocent investors who depended on the preservation thereof. Whatever the result of his services might be, it could not affect or prejudice the United States or any matter pending or possible to be brought before any Department or Bureau of the Government. The history of the legal profession furnishes no case in which it was ever held or esteemed unlawful, dishonorable, disreputable or an impropriety in the slightest degree for an attorney having a seat in Congress to accept a retainer and take service in a cause pending in a *State court*, the performance of which service could in no event result in prejudice to the Government or in any manner affect any matter pending or to pend in or before any department thereof. Neither Henry Clay, Daniel Webster, Thomas Ewing, Sr., John J. Crittenden, Abraham Lincoln, Allen G. Thurman, Stanley Matthews, George F. Edmunds, Matthew H. Carpenter, Roscoe Conkling, nor any other attorney ever withdrew from the practice of his profession by reason of his election as Senator or Representative in Congress, but all continued in its practice during the vacation months and at other times when not interfering with the discharge of their official duties.

Senator Foraker had a right to assume that he had the same privilege. In accepting this employment he did not abuse that privilege, but acted wholly within its limitations. There was no secrecy about this employment or his services. The then Attorney General has stated in a public interview that he, representing the State, had a conference with Senator Foraker in regard to the same. All others who had any occasion to know of his employment had the same knowledge. There was not, therefore, anything either secret or illegitimate connected with his employment or with the services he rendered, and at the time when they were rendered no one thought of criticising him for accepting such employment, and a year after that employment ended he was re-elected to the Senate without a word of opposition on that account. Whatever other ground there may be for opposing his re-election to the Senate at this time, surely there can not be any just objection to his re-election on this ground. That is all I have undertaken to show, and I have undertaken to do this only as an act of simple justice.

Respectfully yours,

W. H. WEST.

Bellefontaine, Ohio, December 16, 1908.

These statements and letters that were sufficient for Judge West should have been sufficient for all others to completely exonerate me from all charges made or implied, for they established that my employment was legitimate; that it commenced in December, 1898, and continued until the early part of 1901, when it ended; that my services were to aid the company with respect to litigation pending in the Courts of Ohio, with which the United States Government had nothing whatever to do; that I was not employed to resist either the enforcement of the statutes of the State or the judgments of the Courts of Ohio, but to help devise a way whereby the company could comply with the decree of our Supreme Court that had been already rendered; and, further, to assist in so re-organizing the company as to conform with the Anti-Trust laws of the United States and of the different States; that my services involved the protection and profitable business operation of hundreds of millions of dollars; that these services extended over a period of more than two years of time; that they commenced and ended long before the United States Government instituted any proceeding of any kind against the Standard Oil Company, and that nothing I had to do had the slightest reference to any duty of any kind that I was charged with as a Senator.

In addition, it should be further noted that the \$50,000 remittance was sent to me long after my relation to the company had ended; that it was sent as part payment on account of the purchase of the *Ohio State Journal*, a business transaction in which I had no interest except to help a friend; that this transaction fell through, and for that reason a few days after the remittance was received, I returned it. And further, as conclusive evidence that I was not in the employment of the company, the company tendered me re-employment on the 7th day of May, 1906, which I declined to accept for two reasons: one, that my duties in the Senate had so increased that I was retiring altogether from the practice of the law, and the other, "because of my relations to the public service," on which account I did not feel at liberty to accept. This second reason had reference to the fact that, in the meanwhile.

the Government had instituted proceedings against the Standard Oil Company.

Particularly should the establishment of these points in my favor have been sufficient when it was further recalled, as I did recall in one of my statements, that no lawyer who was either a Senator or a Member of the House of Representatives had ever before been criticised for practicing his profession while holding office, and that all had so practiced who cared to do so from the beginning of the Government, not only from our own State, but all the other States of the Union.

The only bar to such practice was that a Member of Congress should not accept employment that brought him in conflict with the United States Government or his official duties. This was not only the rule before I represented the Standard Oil Company, but it has been the rule ever since.

The event is recent enough for everybody to remember that the Honorable John W. Kern, United States Senator from Indiana, defended the dynamiters when, prosecuted by the United States Government, they were tried in the United States Court at Indianapolis before a United States Judge.

Only a few weeks ago during the examination of witnesses in the suit brought by the Government for the dissolution of the United States Steel Corporation, an opinion given by Senator Hoar to some wire manufacturing companies which had entered into a pooling agreement that the contractual arrangements they had made were valid and would be upheld by the Courts as not in contravention of the Sherman Anti-Trust law, or any other statutory prohibition, was introduced and given the important consideration to which, in view of the distinguished character of the author of the opinion, it was entitled. The opinion was of great length. It was carefully prepared; it reviewed all the authorities; it was given as an attorney and counsellor, although he was at the time Senator and had actively participated in the enactment of the law; in fact, in a letter to me and in his autobiography, he claimed that he was entitled to more credit for the enactment of that statute than anybody else.

The same rule is applicable to all other kinds of officials. Governors who happen to be lawyers are not expected to

practice their profession in the Courts of their respective States in cases where their employment conflicts with the State's interest. But there is no limitation except that of the apparent impropriety of a Governor submitting himself, even for the moment, to the authority of the officials of a co-ordinate department. It would be awkward for a Judge to punish a Governor for contempt!

While I was Governor I did not go into any Court, Federal or State. But many other Governors see no impropriety in doing so, except where they clash with the interests of the State of which they are Governor.

When, a year or two ago, a requisition issued by the State of New York for the extradition of Harry K. Thaw was presented at the Governor's office at the Capitol of the State of New Hampshire, the Governor's Secretary informed the representatives of New York, according to the newspapers, that they would have to wait until the following Tuesday, until which time the Governor of the State would be continuously engaged in the trial of a cause before one of the Courts of the State.

No one could have been more scrupulously careful to observe all the proprieties, as well as every requirement of official integrity, than Governor Harmon, and yet while he was Governor of Ohio, he appeared in the United States Court at least on one occasion and that for the purpose of defending a railroad!

Except only in the case of Senator Kern, I do not remember to have seen any criticism whatever on account of any of these cases. But there might be hundreds, and even thousands of other cases mentioned to the same effect. It is common knowledge that every Member of Congress who is a lawyer as a rule keeps his office open during his term of service, and that he accepts whatever business may be offered, subject only to the rule that it does not conflict with his official duties.

I think every lawyer who has been a Member of Congress from the Cincinnati districts during the forty years I have had personal knowledge of the facts, has kept open his office and practiced his profession during his term of service. Both Mr. Longworth and Mr. Allen, our present Congressmen, as

did all their predecessors, keep open their law offices, and gladly accept whatever good business may be offered.

In confirmation of this view I received at the time hundreds of letters from lawyers and Judges throughout the country, many of them from States of the South and many of them from Judges and lawyers whom I had never met.

There also came to me hundreds of marked editorials expressing entire satisfaction with my statement, almost as many of them from Democratic as Republican papers, and some of them a great surprise to me. As a sample of these editorials I quote from one Democratic and from one Republican paper.

The Louisville *Courier-Journal*, Henry Watterson, in an editorial entitled "The Utterance of an Honest Man," said:

As far as his personal integrity and honor are concerned, Senator Foraker's vindication of himself is complete. The *Courier-Journal* knows of no Republican with whom its disagreements have been more drastic than with the Ohio statesman, but we have never made political differences the occasion of private attack or ill will, and in the discussion of public differences we draw a line at personal integrity unless proof of guilt be absolute. In the case of Senator Foraker there is no proof of individual wrong or intent whatever.

I appreciated what Mr. Watterson said so highly that I wrote him a note of acknowledgment, to which he replied as follows:

LOUISVILLE, KY., October 15, 1908.

My Dear Senator:—I have never yet been willing to stand by and see a man hounded—especially by persons claiming to be party friends, yet seeking his political life—without coming promptly to his rescue, even though a good fighter like yourself on the other side.

Your response to the President and Judge Taft was overwhelming as an answer and convincing as an argument. I would have taken it analytically and shown its strength and truth except that I was overwhelmed with pressing obligations. In some way I hope yet to be able to do this.

In the meantime, my dear Senator, believe that you have my hearty sympathy and entire confidence. I am sure that in the long run it will prove but an episode and do you no lasting harm.

Your friend,

HON. J. B. FORAKER, etc., etc., etc.

HENRY WATTERSON.

It would seem that, under all the circumstances, what did thus satisfy an able, independent and fearless Democratic

opponent should have satisfied my devoted and ever-grateful friend, Mr. Taft, and *it did, although he pretended to the contrary*. I say "it did," because otherwise he never could have recognized me afterward as he did, and shown me the respect that he did afterward show whenever opportunity therefor was afforded.

The *Dayton Journal*, one of the leading Republican organs of Ohio, said:

Senator Foraker's defense is complete. He takes up the recently published letters and charges in their order, analyzes them with the skill of a trained lawyer, presents his statements of facts (which if untrue can be easily disproven), and, putting all together, clears his skirts absolutely of the last thread of suspicion.

Notwithstanding my answers and the completeness of my defense in the opinion of even such a political opponent as Mr. Watterson, my enemies refused to be placated except by my defeat; and so the war went on until that was accomplished. To accept my defense meant to surrender the only asset they had that was of any value, and that they could not afford to do until after the election.

If it had been any company except the Standard Oil Company, which, at that particular time was being arraigned by the Government upon charges that made it exceedingly unpopular, I might have been re-elected. But however that may be, with President Roosevelt and President Taft both against me, it is no wonder I was defeated. Rather the wonder is I did not fare worse than I did.

Especially so in view of the perfectly vicious character of some of the attacks they appeared to sanction, if they did not instigate them. As an illustration, in the *Times-Star* of December 29, 1908, there appeared a Washington letter by Gus J. Karger, the general character of which may be inferred from the sensationally displayed headlines:

**"ROOSEVELT BELIEVES TO SUPPORT FORAKER IS
PARTY TREASON."**

The President never gives out interviews like other people, but whatever comes from the White House on "high authority" is commonly attributed to him, especially if published in

a recognized Administration organ such as the *Times-Star* then was. At least, such had been and was at that time the custom.

Therefore, everybody understood that it was President Roosevelt speaking when Mr. Karger telegraphed his paper in the letter mentioned the following excerpts quoted therefrom:

The one great issue involved in the Ohio Senatorial contest is now waged for the defeat of Foraker. Such it may be said on "high authority" is the opinion of President Roosevelt. To support Foraker in this fight is to commit an ACT OF TREASON against the Republican Party.

In the first place, there should be no misunderstanding among the people of Ohio as to what Foraker's success would mean. It would mean beginning at home, a political uprising that would sweep the Republican Party from power, and insure the election of a Democrat to succeed Senator Dick. Speaking for the country at large, it would mean that the Republican Party as typified by the Republican Party of Ohio, is willing to send Standard Oil men to the United States Senate, even though the odor of oil be in the nostrils of all. And in the third place, the election of Senator Foraker would be a menace to the success of the Administration of William Howard Taft, for, re-elected for a term of six years, Senator Foraker would be free to devote his commanding ability and high talents to devising methods of making his bitter hostility effective.

No one doubts this. The President believes it. Every student of the Ohio situation knows it to be a fact and recognizes the existence of the danger.

Such is the ground for President Roosevelt's belief that, to vote for Foraker in the Senatorial contest is to commit an act of treason against the Republican Party; an ACT OF TREASON which should not and will not be forgiven.

Members of the Ohio Legislature who lean toward Foraker in this fight should be made to understand the situation. There should be no misconception of this feature of it. . . .

The election of Foraker would split the Republican Party hopelessly in Ohio; it would open the door to effective, perhaps permanent, Democratic control. . . .

This is primarily a fight against the return of Senator Foraker—a fight to purge the party of the poison which threatens to permeate it. . . .

The election of Foraker would spell disaster to the Republican Party of Ohio; it would discredit the Republican Party nationally; it would jeopardize the success of Taft's administration at its outset.

No wonder President Roosevelt DEEMS A SUPPORTER OF FORAKER A TRAITOR TO THE REPUBLICAN PARTY.

Can the Republicans of Ohio longer doubt as to their duty?

And so on for quantity. Articles substantially like the one from which I quote were published in all the Taft-Roosevelt Administration newspapers in Ohio, and in personal interviews with the Republican Members of the Legislature all these ugly things were repeated and insisted upon by the representatives of the combination against me.

Some of them were even more savage in their demands, and more pessimistic in their predictions as to what would come to pass if I should be re-elected to the Senate.

It is in view of all this that I say it is a wonder that, under all the circumstances, and with such opposition to me, I fared as well as I did.

But let it be noted that the predictions of this article, and a hundred others like it, were that if I should be re-elected the Republican Party of Ohio and the nation would be discredited and turned out of power; in Ohio we would be split in two; Senator Dick *might* be defeated for re-election two years later; the Democrats would get control of the State, and Taft's administration would be embarrassed and brought to failure, and in consequence we would be banished from Washington as well as from Columbus.

These were the awful penalties—Democratic control in Ohio and Democratic control in the Nation—that were to be visited on our party and country if I should be re-elected to the Senate.

I was not re-elected. I was defeated. I was defeated by the men who made these predictions, and on account of such predictions, and because in a political sense they tyrannically compelled the Members of the Legislature to vote as they desired under threat that, if they did not, they themselves, because of these awful overhanging penalties, would be considered guilty of treason to the Republican Party of the State and the Nation, and dealt with as such by the men already elected to the Presidency and other high offices.

But what happened? Did the party remain in power? Was Senator Dick re-elected two years later? Did Taft's administration prove a success, and did Republican control continue in national affairs? Every one knows just the contrary came

to pass. Every one knows that two years later our candidate for Governor was defeated in Ohio by more than 100,000 plurality; that Senator Dick two years later was succeeded by Senator Pomerene, a Democrat, and that President Taft, starting in with the good-will of everybody, came out at the end of four years with only eight votes in the Electoral College and with half his own party in hostile array against him.

In the presence of this result I could not help recalling that, in his letter of February 11, 1900, thanking me for having recommended him so cordially to the President for appointment as Governor of the Philippines, he said, "Good fortune has followed me with so much persistence that I tremble for the future on the principle of compensation."

It is some gratification to me to be able to say that I am free according to the testimony of even my enemies from every kind of responsibility for these great political disasters. Had I been re-elected nothing could have happened worse than that which followed my defeat.

Moreover, it is some gratification to be able to say that, notwithstanding all the provocation my enemies gave me to act differently, I never wavered for one instant in my support of my party. I not only voted for Mr. Taft in 1908, but I voted for his re-election in 1912; not, however, in either case because I took any delight so far as he was concerned in doing so, but because I had no other way of supporting the Republican Party to which, for the many honors and distinctions it had conferred upon me, and because of the belief I had in its principles, and that the welfare of the country was involved in their domination, I felt under obligation to put out of mind altogether every consideration of a personal character, and to do all in my power to avert the defeats that overtook us.

Recurring now to the Senatorial contest of 1908, Mr. Charles P. Taft was for a time supposed to be my chief opponent. Until shortly before the meeting of the General Assembly he was practically the only candidate against me to whom much prominence was given by the press. He made a spirited fight, and his friends confidently claimed he would be my successor. He doubtless for a time entertained that same opin-

ion, but when the Members of the Legislature began to gather at Columbus, it soon became evident to him, as well as to others, that he would have the support of only a small minority. He saw the handwriting on the wall and avoided the humiliation of defeat by withdrawing from the race. I followed his example and did the same. Thereupon, the Honorable Theodore E. Burton was chosen to be my successor. He was a man of fine ability, clean character and high ideals, who, in the closing days of his service, distinguished himself and added greatly to his popularity by his effective and successful opposition to the Administration measure providing for the Government ownership and operation of a Merchant Marine.

I do not know how much regret was felt by the President and the President-elect and their respective friends and followers over the selection of Mr. Burton instead of Mr. Taft, but I have reason to believe that President Roosevelt was not very sorely grieved and that the President-elect felt that, much as he would have been pleased to see his brother, who had been very loyal and very generous in connection with his campaign, so honored, yet, after all, it was perhaps fortunate for him that he was not to have a brother in the Senate, who, because of that relationship, could not express himself upon any subject that concerned the Administration without being regarded as the mouthpiece of the President.

But however much or little they may have collectively or individually mourned the defeat of Mr. Charles P. Taft, there was universal rejoicing over the fact that at last I had been "eliminated."

TESTIMONY BEFORE SUB-COMMITTEE OF UNITED STATES SENATE.

In 1912 Mr. Hearst saw fit to revive his attacks by republishing in a series of magazine articles most of the letters used in 1908, with comments, in which he charged that in my answers to his attacks I had made false statements.

Both Mr. Hearst and Mr. Archbold were a few weeks later called as witnesses and testified before a sub-committee of the United States Senate which was investigating campaign contributions.

Both were examined about these letters, which had in some way become the subject of inquiry by the sub-committee. Mr. Archbold fully confirmed all I had said.

Mr. Hearst told what use he had made of the letters, but did not repeat in his testimony the charge made in his magazine articles that I had at any time made any false statement about anything, but practically admitted that he himself had made false statements, by admitting that at the time when, in his St. Louis speech, he read the letter to me from Mr. Archbold inclosing the \$50,000, he had other letters in his pocket showing the money was not sent to me on account of the Jones bill, or any other bill, as he had tried to make his St. Louis audience and the whole country believe, but that it had been sent to be used as the letter stated on its face, in a business transaction; and that these letters he had in his pocket also showed that this contemplated business transaction failed and that on that account I had returned the money to Mr. Archbold a few days after it was received.

Mr. Hearst testified December 17, 1912. I appeared before the committee at my own request the following day, December 18th. In the testimony I then gave I fully reviewed the whole matter.

I regret that this testimony is so voluminous that it is impossible for me to reproduce it here, for I am sure I hazard nothing in saying that it exonerates me from every charge Mr. Hearst or anybody else has ever made on account of that matter, including the last charge that I had made false statements, and showed that I had not made any false statement about anything connected with it from the beginning to the end. It shows that I answered fully, frankly and truthfully in every instance.

There was no reason why I should not have done so, for at no time had I regarded my employment as improper or thought of concealing it from anybody.

The first thing I did after I was employed was to visit Columbus and call upon Chief Justice Spear of the Supreme Court in Chambers, the Court having a day or two before adjourned for the holidays, and inform him about it, and

request that we might have an extension of time in which to thoroughly investigate the voluminous records before determining our line of action.

Later I had a conference with the Attorney General, who was in charge of all the proceedings against the company, in which, according to his own statement, he and I went fully over all the records and questions of not only the main case, but all the subordinate cases.

The sub-committee before which I testified, having been appointed for another purpose, never made any formal report upon this subject, or, if they did, I have never heard of it, but every member of that sub-committee, Democrat and Republican alike, as well as every spectator who was present when I testified, without exception, I think, whether known or unknown to me, openly and enthusiastically congratulated me when I quit the witness stand upon what they termed my thorough and complete refutation of every charge that had been made or even suggested.

CHAPTER XLV.

THE ROGERS LAW.

MR. HEARST'S attack on me had a companion piece in an attack made first in 1907, and then renewed in 1908, on account of the enactment, April 22, 1896, by the Ohio Legislature, of what is known in Cincinnati as the Rogers Law, by which provision was made for the consolidation and merger of the street railways of Cincinnati, then five in number, into one company, to which the Board of Administration of Cincinnati was authorized, subject to certain limitations and restrictions, to grant a franchise to maintain its tracks in the streets of Cincinnati for a period of fifty years upon certain terms and conditions to be prescribed, which terms and conditions, including rates of fare to be charged, were subject to revision at the end of twenty years and at the end of each fifteen years thereafter so long as the franchise might continue.

This statute was enacted after I had been elected to the Senate, but almost a year before I had taken my seat.

It was charged that the Legislature had been corruptly induced to pass the law, and that I had appeared before the Legislature as a lobbyist; that I had kept open rooms at the hotel where refreshments were dispensed, to which legislators were invited and where I had solicited and importuned their support for the bill. It was also charged that for the services so rendered I had been paid enormously large fees, ranging according to the reports so circulated from a few thousand to a million dollars.

The whole story from beginning to end was an extravagant tissue of lies, for which there was no excuse whatever, but it naturally caused much talk that was prejudicial to my candidacy. When it commenced I thought it would easily answer

itself, and that it would not be necessary for me to dignify it with any attention whatever.

Before I had learned otherwise, my good friend, Judge West, who in the way already recited in the preceding chapter came to my rescue in the Hearst matter, made an investigation of these charges. I do not know how I can better refute the malicious lies and slanders and libels that were started than by inserting here a pamphlet published by Judge West, showing how he came to make his investigation, the nature of it and the results of it.

FIAT JUSTITIA.

"Thou shalt not bear false witness against thy neighbor."

The story is current that while the fifty years' street franchise or so-called "Rogers Law" was pending before the Legislature in 1896, Senator Foraker opened and kept open lobby headquarters at Columbus, to which the Members were invited and labored with to support it, and that for these services he was paid by the Cincinnati Street Railway Company an enormous fee, in amount never disclosed, but variously reckoned at tens of thousands or hundreds of thousands, sometimes a million dollars.

It is a singular fact that no one, living or dead, has ever been named as authority for this story. It is either true or it is false. Whether it is the one or the other I have no personal knowledge, but there are living witnesses who have, Members of that Legislature and officers of the railway company, from whom the truth, whatever it is, can be ascertained by making inquiry. Because others believe the story without making such inquiry, or profess to, must I also, and without inquiry join in their hue and cry against an eminent citizen and public servant who has rendered distinguished services to the country, both in field and forum, and whom the State in times past has delighted to honor? This I can not, will not do. Believing it the duty of good citizenship, if that civic virtue is not "a barren idealism" and academic pretense, to do for my neighbor and fellow citizen what I might justly wish to have him do for me, our relations being reversed, to make inquiry and ascertain what the facts are before pronouncing judgment, I have on my own motion taken it upon myself to make that inquiry and the truth has been found to be as follows:

ORDER OF EVENTS.

Ex-Governor Foraker became Senator-elect January 14, 1896, but did not become Senator in fact until March 4, 1897. The "Rogers Law" was introduced in the Legislature February 21, 1896, and passed the House April 2, 1896, by a vote of 75 to 24, eleven of the twenty-five Democratic members voting for it. House J. 605 and 926. It passed the Senate April 22d by a vote of 22 to 13, four of the seven Democratic Senators voting for it. Senate J. 819. It was in no sense a party measure

On retiring from office in 1890, ex-Governor Foraker resumed the practice of law in his home city of Cincinnati, where later he became associate counsel with those eminent attorneys, John W. Warrington and E. W. Kittredge, for one or more of the street railway companies, of which John Kilgour was President, each at a fixed annual salary, payable in any event whether the service he rendered was much or little. Did either of the said attorneys receive compensation from any source, in addition to his fixed annual salary, for any services rendered in connection with the "Rogers Law"?

President Kilgour writes: "The impression prevailing that a large sum of money was paid Senator Foraker for services connected with the passage of the 'Rogers Law' is without foundation in fact. At that time E. W. Kittredge, John W. Warrington and Senator Foraker were and for some years had been the regular attorneys of the street railway company with which I was connected, under contracts of employment for the payment to each of a fixed annual salary for what legal services he might perform. Not one cent in addition to his regular fixed salary was ever directly or indirectly paid by the street railway company to Senator Foraker or either of the other attorneys for any services performed by either of them in connection with the 'Rogers Law,' either before or after its passage, nor was the salary of either of them thereafter increased."

E. W. Kittredge writes: "As one of the attorneys of the Cincinnati Street Railway Company I assisted John W. Warrington and Senator Foraker, its other attorneys, in drafting what is known as the 'Rogers law.' Neither Senator Foraker, Mr. Warrington nor myself received any compensation from the Cincinnati Street Railway Company, or from any other source, for our services before the standing committees of the Legislature or elsewhere, outside of our fixed annual salaries. When the resolutions of the Board of Administration of the city of Cincinnati were prepared by us, as attorneys for the Cincinnati Street Railway Company, granting the extension of time for the various lines of road, the work was done in like manner by all three of us as such attorneys; and we never received any compensation from the Cincinnati Street Railway Company, or otherwise, for these services, outside of our fixed annual salaries."

John W. Warrington writes: "As attorneys of the Cincinnati Street Railway Company, Senator Foraker, Mr. Kittredge and myself each received a fixed and the same salary, and none of us received any extra compensation for any services rendered by us or either of us in connection with the 'Rogers Law.' The whole story that either of us did is an untruth."

Senator Foraker writes: "I was never paid by the Street Railroad Company of Cincinnati, nor by any other person or corporation, for any service rendered in connection with or under the 'Rogers Law,' either before or after its passage, any compensation in money or otherwise, beyond the regular fixed annual salary which was payable by said company and would have been paid to me if that law had never passed, been drafted or thought of."

This is the concurring evidence of the only persons who have or could have had personal knowledge respecting the fact of which they speak. No one of his own knowledge has ever asserted in print or otherwise or

ever will assert, the contrary; nor has any one ever in print or otherwise named nor will he name another as authority for such contrary statement. They who have respect for the command to abstain from bearing false witness against their neighbor or for the Author of this command or for the virtue of good citizenship, will desist from reiterating the story thus refuted. They who have respect for neither the command nor its Author, nor the virtue of good citizenship, will continue to print and circulate it "on reliable authority" (?), which is the inexhaustible but nameless source whence reportorial calumny distills and disseminates its insidious virus with which to poison the public mind against some eminent citizen whose reputation it seeks to blacken or downfall to compass.

NO LOBBYING.

After a measure affecting public or private interests and especially the latter, has been introduced in Congress or the State Legislature and referred to its appropriate committee, it is the usual practice for its advocates and opponents on the request or by permission of the committee to appear before it in person or by attorneys and discuss its merits and demerits and give their respective reasons why it should or should not be favorably considered and reported. Such practice is in no sense lobbying, but is universally sanctioned as a legitimate and proper mode of furnishing the committee the information necessary to its intelligently determining and reporting pro or con.

When the Anti-Saloon League appears by its officers or attorneys before the proper committee of the Legislature to advocate some temperance measure referred to it for consideration and report, the newspapers of the better sort do not, nor do the good people of the State rail at and execrate them as pernicious lobbyists.

The Editorial Association of the State recently recommended the enactment of legislation requiring all expenditures of public money to be reported and published in detail. If, after that measure has been presented to the Legislature and referred to the Committee on Printing, the association shall, by its officers, agents or attorneys, appear before the committee to discuss its provisions and show that the public benefit to result from such publication will more than compensate its cost, will any reputable newspaper of the State or decent citizen denounce them as reprehensible lobbyists?

REPLIES.

Only a fraction of the matter received in reply to inquiries can be incorporated herein without extending this paper to an unreasonable length.

Hon. Chase Stewart, who represented Clark County in 1896, writes: "I never was in sympathy with the Rogers bill and did not vote for it. I recall distinctly the day the vote was taken on that law in the House. I know of no lobby in favor of it. It would be natural for me to have known of any lobbying or unfair methods that might have been used, because of the fact that I stood opposed to the law to the last. It is true the Hamilton County members seemed to be quite enthusiastic and were actively engaged on the floor trying to secure votes for the bill. But I had no knowledge of any unusual or unfair methods whatever being used or employed by friends of the bill."

Hon. H. C. Smith, who was a Representative from Cuyahoga County, writes: "Replying to your inquiry, I have to say that as one of the Representatives from Cuyahoga County, I voted against the Rogers law. I never knew or heard that headquarters were established or kept open at Columbus or elsewhere by Senator Foraker to which members of the Legislature resorted and were labored with by him to support it, and am confident that no other member of the Legislature had such knowledge or will so state, for it could not have taken place without my knowing it.

"The Rogers Law was never mentioned or alluded to by the Senator in any conversation I had with him during that session and I called on and conversed with him a few minutes every time he was in Columbus after his election, which, as I remember, was but twice, once when he appeared before and publicly addressed the House committee and once when he addressed the Senate committee.

"Shortly before the passage of that law in the House arguments were made before the standing committee having it in charge by Senator Foraker and other attorneys for, and by Mr. McDougall and other attorneys against it, just as arguments are made by opposing attorneys to a court or jury. I do not believe that it occurred to any member of the committee nor to anybody else that they were giving countenance to lobbyists by hearing these arguments for and against the law."

The statement of E. W. Kittredge (condensed): "The purpose of the Rogers Law, so far as it affected Cincinnati, was 'to secure to the people of Cincinnati and Hamilton County cheaper, more rapid and more commodious urban and interurban transportation,' by consolidating into one single system under one management more than a score of independent street railway lines then owned and operated by nearly as many different companies under franchises granted at different times empowering each company to charge full fare without compulsory transfers; and 'to enable a passenger to ride for a single fare, not exceeding five cents, from one suburb of the city, in the same general direction, to the most distant suburb—in many cases ten to fifteen miles.'

"After this Rogers Law was introduced in the Legislature, and referred to its appropriate committee, Senator Foraker, with John W. Warrington and myself, as attorneys of the Cincinnati Street Railway Company, appeared before the committee of the House to discuss the terms of this law. The opposition in that discussion were represented by the late Thomas McDougall and other lawyers associated with him. The measure was then and there very fully discussed.

"While said bill was pending before the Senate committee, we were informed that the opponents of the measure had applied to the Senate committee for further hearing of the opponents to the bill. As representing those favoring the Rogers Law, we were notified of this application, and of the time set for this further hearing. Senator Foraker, Warrington and myself went to Columbus and appeared in the committee room of the Senate. McDougall and other attorneys appeared for the opposition before the committee, and the measure was again fully discussed. Both this and the former hearing were in the evening, and we had to remain in Columbus on each occasion until the following day. The charge that Senator Foraker 'opened lobby headquarters at the

hotel,' where he lobbied with members to support the bill, is preposterous. I was in close communication with him on both occasions when I was there, and nothing of the kind occurred within my knowledge. If it took place, it was after I had gone to bed, which did not happen until midnight on each of those occasions.

"Like yourself, I have no earthly interest in this matter other than by stating the truth, that the public mind may be disabused respecting the calumny involved in the charge made at this late day that Senator Foraker was guilty of any improper conduct in advocating the passage of the so-called 'Rogers Law.'"

John W. Warrington writes: "My memory is the same as that of Mr. Kittredge touching the preparation of what subsequently became known as the Rogers bill, and of the times we accompanied Senator Foraker to Columbus and presented arguments upon the measure to the committees of the Legislature. So far as I ever had any knowledge of the facts connected with the Rogers Law, it is not true that any of the counsel indulged in any lobbying anywhere, nor that Senator Foraker opened lobby headquarters at his hotel in Columbus or elsewhere, to which he invited the members and labored with them to support the Rogers bill. I make the same statement also as to the charge that the Senator received any compensation for services rendered in connection with the Rogers bill or Rogers Law resolution, except his regular salary as one of the counsel for the Cincinnati Street Railway Company."

Senator Foraker writes: "I was never in Columbus in connection with the passage of the Rogers Law except in the company of and with my associate attorneys, John W. Warrington and E. W. Kittredge; nor with them except twice; first, when as attorneys we publicly appeared before and addressed the standing committee of the House, and the other time when as attorneys we publicly appeared before and addressed the standing committee of the Senate. On both these occasions Thomas McDougall and other attorneys were present representing the opposition to the law, and as such addressed the committee. I was not in Columbus when the Rogers Law was reported by the committee, and put on its final passage in the House, nor when it was reported by the committee and put on its final passage in the Senate. I did not at my hotel or at any other place in Columbus establish or have lobby headquarters to promote the passage of the Rogers Law or for any other purpose, nor did I at any time or place do any lobbying, except to appear as stated before the committees to secure or influence the passage of that law, and any statement that I did either the one or the other is without any foundation in truth."

In view of the legislative practice so immemorably sanctioned, not even malevolence will affirm that Mr. Warrington or Mr. Kittredge or Mr. McDougall played lobbyist appearing as attorney before either committee of the Legislature. Will it then, in the light of the foregoing, continue to affirm that Senator Foraker played lobbyist by appearing as an attorney before the same committees, and to demand his crucifixion for doing what, only what, and the same thing that was done by Mr. Warrington and Mr. Kittredge and Mr. McDougall? Let justice and fair dealing be accorded and the truth prevail.

W. H. WEST.

Bellefontaine, Ohio, July, 1907.

Later, in 1913, Mr. W. K. Schoepf, President of the Cincinnati Traction Company, the lessee company of the Cincinnati Street Railway Co., who had nothing to do with the Traction interests of Cincinnati until long after the Rogers Law was enacted, and, therefore, had no personal knowledge of the same, requested me to furnish him with a history of the Rogers Law.

In compliance with that request, I prepared and submitted the following:

CINCINNATI, February 3, 1913.

To W. K. SCHOEFF, Esq.,

President of the Cincinnati Traction Co.

Dear Sir:—In response to your request, I submit the following in regard to the Rogers Law:

Perhaps no statute ever enacted with special reference to Cincinnati has been more misunderstood and more misrepresented.

It is difficult, after seventeen years have elapsed, to recall the precise conditions that existed in Cincinnati at the time of this enactment, and that had existed theretofore for a long period of years with respect to the street railroad situation that prompted that legislation.

It is necessary, however, to recall that situation, and that former experience, as accurately as we may, in order to properly understand and judge that statute.

First: The statute has been generally understood, because of newspaper misrepresentation of its character, to authorize a straight fifty-year franchise, running through the whole period, on the same terms and conditions as to rates of fare, transfers, franchise tax, etc., as originally provided.

This is perhaps the greatest misapprehension with respect to that law. The truth is that, while the statute does authorize the tracks of the Traction company to remain in the streets, and while the contract entered into by the city of Cincinnati with the street railway company authorizes the operation of the company's cars over these tracks, and such extensions of them as may be made during the period for the whole term of fifty years, yet the terms and conditions as to rates of fare, transfers, taxes on franchise, etc., continue for only twenty years from and after the date of the passage of the law.

The provision of the statute is that the city is to have the right, authority and power at the end of twenty years from the date of the passage of the statute to revise rates of fare, transfer system, franchise taxes and every other condition of the grant, and that if the company should not accept the changed or revised terms and conditions so made by the city, then it shall have the right to sue in a court of competent jurisdiction to enjoin the city from enforcing any inequitable changes so made.

The statute further provides that at the end of fifteen years thereafter the city shall have the right to make another such revision, and that in the event of disagreement, that disagreement may be settled by the same

kind of appeal to the courts, and that the city shall have the right to make this same kind of revision at the end of each period of fifteen years thereafter, so long as the franchise of the company may be continued.

It is not accurate, therefore, to speak of the grant made in 1896 as a franchise for fifty years according to the terms and conditions then named and agreed upon, but rather that it is a grant for twenty years upon the terms and conditions then agreed upon and a further grant of fifteen years upon such terms and conditions as may be agreed upon at the end of the twenty-year period, and so on to the end.

Furthermore, the average of the unexpired terms of the then existing franchises was sixteen years, so that the total extension of time for the whole system was but thirty-four years.

It is only justice to the traction company, and to the officials then acting for the city of Cincinnati, that these features of the law should be kept in mind.

Another misapprehension is that the traction company is not required to compensate the city in any way for its franchise, while the truth is that, in addition to all requirements, paying taxes on all its property of every other description the same as other property is taxed, it is required to pay a franchise tax of six per cent. to the city on its gross earnings, or about \$300,000 per annum at this time, and an additional 1 2-10 per cent. to the State, so that it may be safely said no corporation in the State bears a heavier proportion of the burdens of taxation, the whole amount paid at this time being about \$700,000, or about thirteen per cent. of its entire gross earnings. What other corporation or business pays thirteen cents out of every dollar of earnings for public taxes?

NATURAL RESULT OF GROWTH.

Considering now the nature of the law in other respects, it will be found by an examination of the statutes in force at the time when that law was enacted, and theretofore in force during the development of the Cincinnati Street Railway system, that this law was but the natural and necessary evolution of the growth and necessities of that system.

A brief sketch of the history of the street railway system in Cincinnati will enable us to understand and appreciate the arguments made by the Street Railway Company at the time of the enactment of the Rogers law in support of such a measure.

The first street railway route in Cincinnati was established some time during the fifties. Without meaning to be entirely accurate, but to illustrate, this route commenced at Fourth and Main streets, which was then considered a business center, and extended from there by various streets north and west to somewhere in the vicinity of what was then known as the Brighton House, and from there returned to the place of beginning, passing over other streets in the same part of the city.

From the same point, or near the same point, thereafter in rapid succession, other similar routes were established; some extending up the river, some down the river, some into the northeastern part of the city, others into the western part of the city; all of them short routes, and none of them having any reference to a general system, but all of them at haphazard, so to speak, just as there seemed to be a demand for trans-

portation on the one hand, and a promise of profit from operation on the other.

No transfers were allowed, because at that time no such thought seemed to have been entertained by any one. Neither was any percentage on gross earnings reserved to be paid to the city by any of these routes, nor was there in any way any fair compensation exacted for the franchises granted.

The first street railroads were of the most primitive character, but the people and their representatives in the city government were so anxious to have them established and put into operation that very liberal and generous terms and conditions were granted to induce their construction and operation.

Notwithstanding these liberal terms and conditions, nearly all of the first street railway routes proved unprofitable, and the men who invested their capital in them lost most of it.

From time to time, during the period intervening between the establishment of the first routes and the enactment of the Rogers Law, there were in all twenty-five different independent routes, or lines, laid out and established, and franchises granted for the construction of street railroad tracks and the operation of cars over them.

The terms and conditions of these several grants were not the same. There was a wide difference in the rates of fare authorized. On some tickets were sold, on others only cash fares were collected.

When these original short routes were extended to the outlying portions of the city, additional or higher fares were authorized.

In consequence, at the time when the Rogers Law was enacted, in 1896, the authorized fare that might be collected from a passenger coming to the central portion of the city from outlying districts varied all the way from five to fifteen cents for each passenger. On some routes it was six cents, on some eight cents, others ten cents, and so on, all the way up to fifteen cents, and if the passenger desired to reach some point on the opposite side of the city, he must pay another fare. To illustrate, if a passenger living on Price Hill desired to go to some place on Walnut Hills, it cost him eight cents to Fountain Square and five cents additional from there to his destination.

If a passenger living on Walnut Hills wanted to get down into the city, he had to use the Kerper lines—Route No. 10, on Gilbert Avenue, or Route No. 16, Mt. Adams and Eden Park Inclined Railway Company. The fare on each of these routes was five cents, but that carried him only to the center of the city. If he wanted to reach either of the principal depots, Music Hall, City Hospital or any place of business beyond the central portion of the city, another fare of five cents was exacted. The same was true as to Mt. Auburn and Avondale.

These routes having been established at different times as they were applied for and established, the franchise to operate cars over them expired at different times.

At the time when the Rogers Law was enacted some of these routes, then in operation, had respectively three or four years to run; some of them six or eight; some of them ten or twelve; some of them sixteen or eighteen; and one of them had an unexpired term of twenty-one years to its credit.

In the beginning wooden stringers with strap iron were in some instances used for rails; for years only a very light rail was laid. Cars were correspondingly small, light and primitive. The motive power was animal—horses and mules. Many of the cars of that earlier period were hauled about over these different routes with a single mule.

As time passed and the necessities for this kind of travel increased, larger and heavier cars were brought into use, and this necessitated heavier rails and a different and better construction generally.

The weight of the rails chiefly used was at one time thirty-two pounds to the yard, increased later to fifty-two pounds; later to sixty pounds; then to seventy, which was the character of rail coming into use generally over the city at the time when the Rogers Law was enacted. The weight has been, from time to time, increased still further since then, until now the rails most commonly used weigh from one hundred to one hundred and twenty pounds to the yard, and where the streets are paved all are laid, as a rule, in concrete.

Short and light cars, such as were in common use only a few years ago, have been practically entirely discarded, and only large and very expensive cars are now being constructed and used. All other equipment has been correspondingly improved.

The original routes were all limited to the plateau to which the city was originally confined. None of them undertook to climb any of the hills, but in time, as the suburbs on the hilltops began to develop, there was a demand for street car transportation to those points. Then the inclined planes were built, and the street railways were in that way enabled to mount the hilltops where their routes and lines were extended, so as to accommodate in some measure the inhabitants residing there. This problem of climbing the hills brought about the first radical improvement or change in motive power, by the substitution of cable for animal power. The Gilbert Avenue line and the Martin cable line are illustrations not only of the character of the cable power employed, but also the short time this kind of power was found to give a satisfactory service. After a short time it was compelled to yield to the electric motor power.

All these changes in construction and equipment and in motive power are mentioned to recall the fact that as from time to time these changes were made a practical reconstruction at great loss and expense to the then existing companies had to be incurred, not the fault in any instance of the management, but due to the natural growth, evolution and improvement of the general situation, with the necessities and demands created thereby.

Coming now to the short period of four or five years immediately preceding 1896, say from 1890 to 1895, there were in existence the lines belonging to the Cincinnati Street Railway Company, consisting of most of the original routes as originally established, over which the cars were being operated in accordance with the requirements found in the ordinances applicable respectively to each of these lines.

The Mt. Adams and Eden Park Inclined Railway, or the Walnut Hills roads. (Gilbert Avenue and Eden Park.)

The Main Street line, which was a single trolley, electric motive power line, extended up Main street to Mt. Auburn, and that portion of the city.

The Martin, or Mt. Auburn Cable Railway line extending up Sycamore street, and by other streets, to Avondale, and that section of the city, also the Cincinnati, Newport and Covington lines.

All these lines were operated on routes thought at the time when established to be calculated to serve the best interests of those desiring street railway transportation, but in the lapse of years and the growth of the city in different directions, they were outgrown and in a large measure made unsatisfactory to those making use of them.

These companies were all in competition with each other, in the sense that there was no accommodation extended by one to the other; for illustration, no company could give a transfer over the lines of any other company. The rates of fare were not any longer satisfactory, and the general terms and conditions were not just to the city under the new conditions that had arisen.

Over the new routes from time to time established there had been for years a bitter street railroad warfare almost constantly going on. This constant conflict and clash of interests before the city authorities and in the courts kept the newspapers filled then, as they are now, with sensational and controversial charges of unsatisfactory street railway service and conditions. Every day practically we read of complaints that the cars were too small; that they were dirty and that they were overcrowded, and so on.

In the meanwhile, as electric motive power came more and more into use, the people came more and more to desire and demand a general transfer system, a better arrangement of routes, new and better and more modern cars, lower fares, and an improvement generally in all the terms and conditions of street railway travel. Thus the necessity of consolidating all the lines into one general system became more and more apparent.

This situation prompted negotiations which, subject to the legislation necessary to authorize the same, resulted in the acquisition by the Cincinnati Street Railway Company of all the other lines operated in Cincinnati, except only the Cincinnati, Newport and Covington lines. This acquisition and consolidation was for the purpose of making possible a united, harmonious system with universal transfers, and an electrification of the motive power of the whole system, together with a reduction of fares and the establishment of some satisfactory basis or agreement for the use of the streets for street railway purposes.

Looking back to that period, it seems almost incredible that anybody should have been opposed to either the consolidation or the legislation necessary therefor to accomplish such a purpose, and yet some of the newspapers of that day will bear testimony to the fact that there was a bitter, hostile opposition and criticism at every step that was taken, no matter how reasonable and no matter how much, as everybody can now see, it was in the interest of the whole community. Those who thus complained were not, however, an "overwhelming majority of the people of Cincinnati," as has been repeatedly asserted.

Whether a majority of the people of Cincinnati would have voted against the Rogers Law if there had been a referendum no one can state definitely, for, while there was much opposition started by the news-

papers, there was at the same time the strongest possible advocacy among the people themselves of the measure. There were a number of improvement associations in the city at that time, each having a large membership, who actively and zealously worked in securing that legislation. The Walnut Hills Improvement Association, the Westwood Improvement Association and the Fairview Heights Improvement Association are only some of quite a number that might be named. The Walnut Hills Association was exceedingly zealous in its support of the Rogers law. It sent its representatives to Columbus, as did the other associations mentioned, to advocate the law, and to show the necessities for it.

Mr. Frank M. Coppock at that time represented the Walnut Hills Improvement Association, and made an earnest appeal and very able argument before the committee of the House in favor of the relief asked for.

While the city as a whole might have voted against the legislation if it had been submitted to the people, it is safe to say that on Walnut Hills, where they had at that time a population of perhaps 50,000 people, there were probably not a thousand people all told who were opposed to the measure, and they were opposed because they were influenced in their opinions by the misrepresentations as to the character of the bill, which they read in the newspapers.

It should be further said that the men who made this opposition were, as a rule, men who had never been identified with any great public improvements or utilities or with undertakings of any nature that required the raising of large sums of money and involved accountability to those who furnished the capital for the management of the property it represented. Neither were they people who were to be materially benefited by what was proposed as were the people of Walnut Hills and other sections named.

But to accomplish such consolidation and bring about the results mentioned it was necessary not only for the Cincinnati Street Railway Company, which was the only company then operating in Cincinnati able to do anything of this kind, to purchase or in some proper manner acquire all the other properties and then to raise and expend, in order to give the city what its necessities demanded, at least \$6,000,000, necessary, according to the estimates of the company's engineers, for the reconstruction and the electrification of the consolidated system.

The attorneys of the company were instructed by the company's Board of Directors to examine carefully the statutes applicable, with a view to ascertaining what, if any, additional legislation was necessary to enable such a comprehensive and manifestly necessary and beneficial plan to be carried out.

The Rogers law was the result.

This statute consisted of three sections, amendatory of Section 2505 as it then stood, viz: 2505a, 2505b, 2505d.

Section 2505a authorized the leasing or purchasing under certain conditions by one street railway company of the lines of another.

Section 2505b authorized under certain conditions the consolidation of street railway lines so acquired with the lines of the company acquiring them.

Section 2505*d* authorized the granting of franchises for a period of fifty years to such consolidated companies, subject to the revision as already pointed out as to fares and all other terms and conditions at the end of twenty years, and at the end of each period of fifteen years thereafter.

From what has been said it will appear that the statute so prepared was but a natural evolution and an absolute necessity under the then existing conditions.

Without the authority so given there could not have been brought about the acquisition by one company of all the competing lines and the consolidation of all the routes that had been established, and were then in operation, with a universal transfer system, such as was provided for; and in no other way could the then existing routes, the average life of which was sixteen years, have been induced to surrender the franchises they had, consent to a transfer system, the recasting of the several routes, the payment of a tax on gross earnings as a compensation to the city for its franchise, and, in the cases of those having a right to collect a higher fare, they could not have been induced to bind themselves to accept a lower uniform fare of five cents per passenger.

The debates before the committees of the House and the Senate will show that the company asked for a fifty-year period for the additional reason that we were then in the midst of depressed and even distressing business and financial conditions, when it was a difficult matter to raise \$6,000,000 for such a purpose, and by many thought to be impossible to raise it except by the issuing of bonds with a longer time to run than a period of twenty-five years.

Practically everybody at that time familiar with financial conditions was of this opinion, and all who will recall the conditions then existing will remember that fact.

WAS NOT THOUGHT UNREASONABLE.

It was not at that time thought unreasonable in view of the purposes to be subserved and the ends to be accomplished, to ask that the company be given a right to maintain its tracks in the streets for that period, since somebody's tracks, either those of the then company or some other company would, of course, continue in the streets during that period, and for as many years thereafter as street railroad tracks in the streets of our cities may be necessary.

The mere placing of the tracks and the keeping of them in the streets did not, therefore, involve the surrendering of anything on the part of the city that had not already been surrendered by the different franchises that had been granted, and would continue to be surrendered from time to time by the city not only for fifty years, but through all the future life of street railroads as occasion might require.

Moreover, the Rogers Law in that respect was patterned after a law applicable to Dayton, Ohio, which had been passed only three or four years before, under which a fifty-year grant had been made to the street railway companies of that city, fixing the fares and terms and conditions for the whole period of fifty years without any revision at any time during that period.

Nobody had made any objection to that grant, but, on the contrary, had regarded it as, under all the circumstances then and there existing, entirely reasonable.

Looking beyond Ohio to other states, long franchises were authorized and granted in New York, Pennsylvania, New Jersey, Indiana, Illinois, Missouri and other states. Some of them for ninety-nine years, others for nine hundred years, and some of them perpetual.

At any rate, the attorneys prepared the Rogers bill authorizing a fifty years' franchise, not only because their client so directed, but also because it was one of the necessities of the situation and calculated to work great benefits to Cincinnati in the betterment that would result in our street railway situation.

The House amended the bill as prepared by the attorneys by providing that at the end of twenty-five years there should be a revision of all fares, terms and conditions, and, the city and the company failing to agree, their differences should be settled by arbitration.

In the Senate this amendment was amended so as to provide that at the end of twenty years, and at the end of each period of fifteen years thereafter, the city should fix new fares, terms and conditions, and, if the company was not willing to accept what the city did in this behalf, it should have the right to sue the city to enjoin the enforcement of any inequitable terms and conditions so provided in any court of competent jurisdiction.

Under the authority of this statute the Board of Administration of the city of Cincinnati, on the application of the Cincinnati Street Railway Company, after public hearings that extended over a period of more than three months, at which the citizens of every section of the city were fully heard, rearranged the several routes and passed the resolutions of August, 1896, granting to the Cincinnati Street Railway Company the contractual rights and franchises under which that company and its successor lessee, the Cincinnati Traction Company, have since been and are now operating the street railway lines in the city of Cincinnati.

This work of the Board of Administration was described in the daily press of the next day, August 14, 1896, as follows:

The Cincinnati *Enquirer* said:

**FINEST STREET RAILWAY SYSTEM THAT CAN BE
FOUND IN THE WORLD.**

ARRANGED FOR YESTERDAY BY THE B. OF A.—THE COMPLETE CONDITIONS OF CONSOLIDATION PROVIDED FOR—TRANSFERS, ALL-NIGHT CARS, ILLUMINATED SIGNS AND PERHAPS LOWER STEPS—SIX ENTIRELY NEW ROUTES ESTABLISHED—AND THERE WILL BE THIRTY-THREE LINES—EVERYTHING IS PROVIDED FOR AND THE BOARD CAN MAKE ADDITIONAL CHANGES IN THE FUTURE.

The first thing taken up at the morning session was prescribing the terms and conditions upon which the grant of the Consolidated Street Railway Companies is extended so as to make its life fifty years.

This resolution, it was stated, covers everything asked for by the public, and many things which were not, and has taken to complete it months of arduous labor upon the part of the members of the B. of A. under the leadership of President . . .

The Cincinnati *Commercial Tribune* said:

A GOOD WORK COMPLETED.

THE CINCINNATI STREET RAILWAY LINES PERFECT CONSOLIDATION—RIGHTS CONCEDED PROMPTLY ACCEPTED—SCHEDULE OF TRANSFERS ARRANGED ON A THOROUGHLY LIBERAL BASIS—ALL CONDITIONS ARE FOR THE CITY'S BEST INTERESTS—NEW EXTENSIONS ARRANGED FOR AND IMPROVEMENTS PROPOSED THAT WILL MAKE THE SYSTEM, WHEN COMPLETED, SECOND TO NONE IN POINT OF EQUIPMENT, ORGANIZATION AND SERVICE.

It's all over now, and the most fastidious patron of street railroading can not refrain from complimenting the Board of Administration's contract with the Consolidated.

It is doubtful if a more carefully prepared document, or one which more fully carries out all of the wishes of all the people has ever been made a part of the city's history.

It must be borne in mind that every step taken is to improve the condition of the traveling public, and that not one thing has been lost. Even the advocates of a three-cent fare can take no exception, since the perpetuation of the five-cent fare system does not increase the period during which the company may charge that rate under already existing franchises. Moreover, it reduces the rate for children on the Walnut Hills lines, and secures on all inclines a two-and-a-half-cent fare. In addition to all of this, every important complaint against the present system has been provided for and the abuse corrected. All-night cars will be run to every important suburb . . .

The Cincinnati *Times-Star* said:

STREET CAR LINES CONSOLIDATED AND EXTENSIONS COMPLETED.

SEVERAL ENTIRELY NEW ROUTES IN THE PLAN—THE FULL LIST OF TRANSFERS IS ARRANGED—ILLUMINATED SIGNS—"OWL" CARS.

A magnificent system of street railroads not to be excelled or perhaps even equalled anywhere was made a surety for Cincinnati Thursday morning, when the Board of Administration formally passed the resolution imposing upon the Cincinnati Street Railway Company new terms and conditions of grants and franchises as provided by the Rogers law, consolidating all the street railways of Cincinnati.

The citizens of the Queen City of the West have probably been given the finest system of street car transportation now in existence. The terms and conditions upon which the street railway company are given are what is commonly known as a fifty-year franchise, are seemingly as fair as any fair-minded citizen could ask for. The conditions impose upon the street railway company a volume of things almost unheard of in the annals of municipal legislation in favor of the people.

THE TRANSFER SYSTEM.

Lines have been extended and absolutely new ones are to be speedily constructed, so that one may go absolutely to every portion of the city. The transfer system is positively general in its character. It has been so arranged after careful study that one may transfer anywhere and

under advantages that can not but be appreciated. These transfers and extensions, when carefully inspected, as they may be in the full resolution of the Board of Administration, which is given on the sixth page of the *Times-Star*, show that the advantages secured by the citizens is more than equal to much cheaper fare without them.

Almost every request for a transfer, and there were hundreds of them received, has been granted by the board. In scores of cases bodies of citizens have been before the Board of Administration with a list of transfers asked for. Out of these lists there have been some that, they said, they must absolutely have. The resolutions show that not only have the people been given what they "absolutely must have," but moreover, everything they asked for . . .

The Cincinnati *Post* said:

With a rush B. of A. adopted the report of the Committee of the Whole on street car consolidation, and fifty-year franchise extension. There will be no reduction of the fares for at least twenty years. Thirty-three routes in the system, six of them entirely new. Over 2,000 transfers are provided for. Illuminated signs and all-night cars are ordered.

(*Local.*)

The long-looked-for report of the Committee of the Whole of the B. of A. on street railway consolidation and extension of franchise was submitted to the board Thursday morning. The reading of the report of the B. of A. was finished shortly before 11 o'clock. At once Vice President Washburn moved that it be accepted, and by the unanimous vote of the board it was adopted, becoming at that moment a law. The resolutions of extensions and consolidation will take effect in thirty days.

THE STREET CAR DEAL.

(*Editorial.*)

The compact between the city and the Cincinnati Street Railway Company is now complete, and the B. of A. servants of the people, have received the sincere thanks of the Consolidated. The monopoly now has a cinch on the magnificent business, safe, reliable, and that can not fade away for twenty years. While the people are guaranteed an improved service every such improvement becomes necessarily a factor in the production of rapidly increasing dividends. What the public gets in return is nothing beyond what has already been freely granted in every other large city of the land—advantages that will appear as mere trifles when twenty years have rolled around. What the company gets is a fixed and high-rate income from every passenger that it carries, and which can not be reduced for a score of years, though the present cost of carriage should be reduced in that period 100 per cent. . . .

The *Freie Presse* said (editorial):

The street railway system provided by the Board of Administration was "a better one than any other city in the world had, and that the car system of no city scarcely approaches what Cincinnati now has."

The *Volksblatt* said:

Soon we will have a new and better street car system, transfer system, etc. The so-called Rogers law, which was passed April 22, 1896, gave the Cincinnati Street Railway the right to consolidate all the different lines and routes then operating in the city of Cincinnati, and the resolutions adopted yesterday by the Board of Administration bind this.

Thus it will be seen that every leading newspaper in Cincinnati, German as well as English, save and except only the Cincinnati *Post*, spoke in terms of highest praise of the final outcome of the so-called Rogers law; and it will be noted that the criticisms of the *Post* were not severe, especially not in view of the fact that it had persistently opposed the enactment of the Rogers law and the action of the city authorities under the same.

It may be added that these friendly expressions of the daily press reflected what was practically the universal sentiment of the citizens of Cincinnati and warrant the statement that no act of the Ohio Legislature having special reference to the city of Cincinnati was ever regarded as more helpful and satisfactory than was this necessary and, at the hands of some people, much-abused law.

Under these resolutions and acting in perfect good faith, the Cincinnati Street Railway Company proceeded forthwith to make numerous extensions of its lines, reconstruct its track where necessary, and to electrify the whole system; to put into service new and better equipment, and to do, in short, all that it obligated itself to do in accepting these resolutions, and expended in this behalf down to the time when, in 1901, five years later, it leased its property to the Cincinnati Traction Company in the neighborhood of \$6,000,000.

The Cincinnati Traction Company became the lessee of the Cincinnati Street Railway Company with the consent of the city, given by the official action of the City Council and other municipal authorities, and as such lessee took possession of the property on the 21st of February, 1901, and since that time has been engaged in its operation. It took up the work of extensions, reconstructions, better equipment and general improvement of the system where the lessor company quit, and has since expended for such purposes, through the Ohio Traction Company, organized to assist it financially, over \$9,000,000, perhaps as much as \$10,000,000, including the Traction Building, the car works and some other properties of that character that do not belong, except in an auxiliary sense, to the traction system.

There has not been at any time any dereliction on the part of the Cincinnati Street Railway Company, or its lessee, the Cincinnati Traction Company, with respect to a full and complete performance on the part of these companies, of the terms and conditions embraced in the grant made by the resolutions of August 13, 1896.

On the contrary, every requirement made by the city under and by virtue of these resolutions, has been promptly and fully complied with.

In the meanwhile, in 1901, a suit was brought by a taxpayer on behalf of the city of Cincinnati to test the constitutionality and validity of the Rogers law as the source of the grant made by the resolutions of

the Board of Administration of August, 1896. That suit went to the Supreme Court of Ohio, and it was by that court decided in that case—72 O. S., page 93—that the Rogers Law was a constitutional and valid enactment, and that the resolutions of August, 1896, authorized by that statute were also valid.

These resolutions are frequently spoken of as though a grant of a special privilege. They are not that at all. Their acceptance by the company makes them a contractual obligation entered into between the city and the company, binding on the city and binding on the company.

It is one thing to alter or repeal a special privilege or immunity, or a statute authorizing something to be done before it has been done. It is another thing for the Legislature to undertake to repeal, alter or change a contractual obligation after it has been entered into.

The overwhelming weight of authority is to the effect that contractual obligations can not be impaired.

If this were not true, it might be well asked why consider any proposition made by the city, if, when solemnly entered into and after millions of dollars have been expended on the faith of it, such contract can be repudiated at will by the city, or by the state, or by anybody else acting for or controlling the city.

Very truly, etc.,
J. B. FORAKER.

Although this matter and the Standard Oil letters properly belong in an account of my professional career rather than among notes of my public services, yet I incorporate them here because use of them was made part of the program adopted and carried out for my "elimination" from the public service.

CHAPTER XLVI.

NOMINALLY A CANDIDATE FOR THE PRESIDENCY.

I HAVE referred (p. 312) to the statement made in the House of Representatives by Champ Clark to the effect that the Brownsville affray had put me out of the Presidential race of 1908.

Recurring to what that remark suggests, there was always after I first became Governor much mentioning of my name, from time to time, both in the newspapers and by individuals in connection with the Presidency. Some of these comments were favorable and others unfavorable.

It was with me about as it is with every other man who is elected Governor of one of the important States of the Union, especially if his election be preceded by a campaign that involves questions of importance that are discussed in such a way as to attract attention.

This talk, however, apparently gave others a great deal more concern than it gave me. I was not unmindful of it. I appreciated the compliment involved, but there was never a time when I felt that it was wise, or that I would have any fair chance for the nomination, if I should, at that particular time, become a candidate.

As I now look back over my career, I can see, as I saw then, that I had a good chance for the nomination in 1888, and rightfully so, according to political usage and practice.

I had at that time a soldier record, a judicial record, and was serving my second term as Governor of one of the most important States of the Union. I was not, however, a candidate; and refused to allow my name to be used for two reasons; in the first place, because Ohio had, with my approval and co-operation—no one man doing more or even so much in that behalf as I had done—endorsed Mr. Sherman at our

State Convention of 1887 as Ohio's candidate for the Presidency in 1888.

When, at the National Convention, it became apparent to all that Mr. Sherman could not be nominated, I was according to all the rules applicable to such a situation at liberty to allow the use of my name, but I declined although urgently solicited to do so by the Blaine element which was strong enough to have given me the nomination, as it afterward gave it to Harrison, because I did not want to be liable to the charge of infidelity to Mr. Sherman's cause, and, therefore, refused to consider the matter unless first requested by him to do so. But also, because, it appeared to me presumptuous for me to aspire to the Presidency while there were ahead of me in years and experience such great Republican leaders as Harrison, Allison, and a dozen others, who were yet available after both Mr. Blaine and Mr. Sherman had been dropped out of consideration.

I had not at that time had any experience in the public service beyond my own State. I thought then, and subsequent experience has confirmed the correctness of that view, that men who have served as Members of Congress in either the House or the Senate, and have been in this way brought into contact with our actual National life are so much better qualified for the Presidency than are the men, as a rule, who have not had that experience, that, all other things being equal, they should have the preference; not because they merit the honor more, but because they are in an important sense much better qualified for an intelligent and satisfactory discharge of the duties of Chief Executive.

Harrison had the advantage of this experience. He had served with distinction in the Senate, and had seen enough of practical politics and official life to be typically well qualified not only for the official but also the social duties of the position.

He was one of the ablest men who ever occupied the White House. In all official respects his administration was admirable. But he was unfortunate in his intercourse with others. Some one truthfully said he had a great faculty for measures, but none for men. Nearly everyone who called upon him

came away with a feeling that he had been an unwelcome visitor. His reputation in this respect was in time exploited by the newspapers, but long before anything was publicly said in criticism it had been widely advertised privately by word of mouth.

This made him much trouble; so much that it was with difficulty he secured a renomination. The defeat that followed was due almost altogether to the fact that while everybody had great admiration and respect for his integrity and ability nobody had any enthusiasm for his personality.

But, irrespective of all this, the term he served and the term for which he was defeated, served by Mr. Cleveland, carried us down to 1896, at which time, I, in common with Republicans generally, regarded McKinley as the logical candidate because of his authorship of the McKinley Law, and the fact that the hard times under Mr. Cleveland's second administration had made the tariff the leading issue.

I was personally a warm friend of Thomas B. Reed, McKinley's chief opponent. It was with regret I found the two men pitted against each other. Under any other circumstances it would have been to me a great pleasure to have supported Mr. Reed, for I thought then, and my subsequent better knowledge of him confirmed the opinion, that he was one of the most intellectual and one of the most capable public officials our country has ever produced.

He was a much more scholarly man than McKinley and a greater man in other important respects, but McKinley was a man of such popular manners, such a pleasing and effective campaign orator, and withal such an all round safe and prudent man that in view of the fact that he was from our State, and just then the most distinguished and popular champion of protection, I could not have hesitated to give him the preference even if I had not desired to do so in making choice of a Republican candidate for the Presidency.

His election and re-election carried us down to 1904, at which time nobody had any chance for the nomination as against President Roosevelt. His nomination and election brought us to 1908. I have mentioned all this in detail to

show that except in 1888 there was never at any time any reasonable chance for my nomination to be President, even if I had seen fit to become a candidate.

I recognized that as fully then as I do now, and it was because of this fact that I said there was never any time for me to be a candidate for the Presidency that seemed to me to be a favorable time, and, therefore, I never indulged that ambition prior to 1908, except only in so general a way that it had no influence whatever upon my course in the discharge of my public duties.

In 1908 I was a formally announced candidate for the nomination, but with full knowledge at the time that I had no chance whatever to be nominated. That I should become a candidate under such circumstances requires some explanation.

In 1906 after my vote against the Hepburn Rate Bill there was a loud outcry, preceding our State Convention, that year held at Dayton, O., against the endorsement of the Senators. Mr. Burton, then a member of Congress from the Cleveland District, appeared to sympathize with this feeling. In a speech, shortly prior to our convention, he undertook to occupy middle ground by advising that the approaching convention should heartily endorse the National administration and "less cordially" endorse the Senators.

I do not now recall exactly what his opposition was to giving a cordial endorsement to Senator Dick, but the specifications against me were that I had not loyally supported the administration as to the Rate Bill, and, perhaps, some other matters, about which I had been wicked enough to have opinions of my own.

I was spending the summer with my family in a cottage at Seabright, New Jersey. I had not intended to attend the convention until I read the "less cordial" proposition of Mr. Burton. I had barely time to reach Dayton; but I was there when the Convention assembled. It was one of the most remarkable in the history of our State.

I was not on the program, but I was on the platform when the Convention was called to order.

The gentlemen who supposed they had that Convention in charge did not intend I should have a place on either the program or the platform, but in view of the question that had been raised I wanted to be present to see for myself whether or not the Republicans of Ohio wanted to give me a "less cordial" endorsement. If they had given me such an endorsement my services in the Senate would have terminated then and there. It was perfectly manifest to me from the moment I reached the Convention that the great majority of the Convention had no sympathy whatever with Mr. Burton's proposal.

On the contrary the majority of the Convention were overwhelmingly and enthusiastically and unqualifiedly "cordial." So much so that they wanted to adopt a resolution then and there endorsing me for the Presidency in 1908. It was only on account of my positive interdiction that such a resolution was not offered.

The excuse for then offering it was that, on account of a change that had been made as to the time for the election of State officials, there would be no Convention in 1907, and no opportunity therefore for the Republicans of Ohio to express their preference until 1908.

I disapproved the proposition and enjoined my zealous friends from bringing it forward, not because of any fear I had of the result, for a blind man could see that it would have been adopted, but simply because the delegates had not been elected to that Convention with reference to that matter, and in my opinion it would be like taking a snap judgment to utilize delegates not selected with respect to so important a matter, to express so long in advance of a nomination the Presidential choice of a Great State.

That Convention will always justly hold a prominent place in the annals of Ohio politics. Governor Herrick was Temporary Chairman. He made a long speech and the hour was late when he had concluded, but immediately there came from all over the hall loud cries for a speech from me. The temper of the Convention as well as my own temper may be

pretty fairly gathered from the remarks I made in response, which were in part as follows:

I commenced by complimenting Governor Harris, who, as Lieutenant Governor, had succeeded to the Governorship upon the death of Governor Pattison. Among other things I said of him:

He is a true American. He is a representative of the very best type of American citizenship. And, what is more, he is a Republican of the old school. (Tremendous cheering.) There are no modern frills and tucks on him. (More cheering.) He is of the old Abraham Lincoln Civil War Veteran School, and there is neither spot nor blemish on his escutcheon. I have known him forty years, and all that time, in both peace and war, he has been on the firing line, making a splendid record. He is a quiet man. He is also a just man. Every man will get a square deal under him. And he will never think it necessary to tell anybody about it. (Loud applause.)

The responses of the Convention were largely due to the fact that they imagined that my commendation of the Governor had some reference by contrast to President Roosevelt.

Of course they were mistaken about that!

I then called attention to the importance of the impending Congressional Elections, saying that, while we had a candidate in each District, yet "Theodore Roosevelt is running in every district."

What I said further needs no explanation and I, therefore, quote without comment as follows:

That is true, because, as Governor Herrick has said, he has had more to do than any other President ever before had with the legislation that Congress has been enacting. President Roosevelt recognizes that. It was for that reason he, himself, took the initiative in this campaign. He took it when, a few weeks ago, he called in conference with him, at Oyster Bay, the Speaker of the House, Mr. Cannon, and certain members of the Congressional campaign committee, and there determined what our platform should be in this campaign; and determined, not that it should be as the Governor has suggested, tariff revision, but that we should "stand pat" until after the next election. (More applause.) If the people of Ohio stand for whatever Theodore Roosevelt stands for, they will not stand for tariff revision this year, for he himself has determined it, has spoken it, has proclaimed it, not alone as the official result of that conference, but in his somewhat celebrated letter to Mr. Watson. He has the idea that our platform in this contest should be, not promises as to the future, but the performances of the past.

Let us take an account of stock, said he. Let us hold up to the people what we have done, and let us find out whether or not they approve what we have done.

Now what is it that we have done? Too late for me to tell you. The list of achievements is too long for me to enumerate. It is unnecessary I should. Mr. Bryan, the peerless leader of the Democratic Party, has made a speech, one in particular. He has made many, but one in particular, in which he has cast the horoscope, and in which he has practically approved all we have done. He does not seek to make the issues of 1908 on account of anything we have done, but says the paramount issues will be two: Tariff revision and Government ownership of railroads. (Laughter.) Mr. Bryan says we want tariff revision. Some day, my fellow citizens, we will want it, and we will have it, but when is a question for the Republican Party to determine. We are the best revisionists in all this country. (Renewed applause.) We are experts. We know when and how. We have revised repeatedly, and always successfully. We got a commission from the people in 1896 to revise the tariff, and the Dingley law was the result, and in consequence, to show our capacity, let me refer you to the record, we have had ten years of the most unexampled and uninterrupted prosperity any country on the face of the earth has ever been blessed with in all human history. (Applause.) In this time everything has doubled itself except only the Democratic vote. (Laughter.) Ten years ago the farms of this country were worth less than half in value what they are worth today. The annual crops of the farmers are today worth twice what they were ten years ago. The cotton planters of the South have a product three-fold in value what it was ten years ago. Our foreign commerce has grown from an aggregate of sixteen hundred millions to three thousand millions of dollars, and our balance of trade is five hundred million dollars a year. Ten years ago, according to Mr. Gompers, there were three million wage workers in this country idle and hunting jobs and suffering hunger because they could not find them. Today there are three million jobs hunting men and suffering because they can not find them. (Great applause.) There is not an idle man between the two oceans except from choice, or from his own fault. Why, then, this haste about revision? The Governor spoke about lumber. I insisted most strenuously, when the Dingley law was framed, that the tariff on lumber should be only one dollar a thousand instead of two dollars, as they made it, but I was astonished to find how numerous were the representatives and how overwhelming were the arguments for the protection of that interest. And I imagine if we were to undertake to revise today, with the view of putting lumber on the free list, we would have a disturbance among these people and a rallying of the friends of that interest in Washington that would remind you of those disturbing days when we legislated on these industrial subjects. The man in New England who wants to make woolen goods, and thinks perchance he can get free wool, may want revision. The coal man, who uses it in New England, thinking he may get free coal, may want a revision. The shoemaker, especially the Ohio shoemaker, seems to want revision, hoping he can get free hides. (Applause.) So that, on an additional profit of three cents for each pair of shoes,

which he would not give to the consumer, but put in his own pocket, he might accumulate a fund with which to buy some more newspapers with which to tan the hides of Senators and start a great moral reformation within the Republican Party.* (Laughter and applause.) But, my fellow citizens, the great mass of the people of this country, while recognizing that the schedules are not inviolate—that they are made to be changed—are of the opinion, so happily expressed by Speaker Cannon, when he said in his speech before the convention that renominated him in Illinois, that the Republican Party would revise the tariff, not when Mr. Bryan or some other Democrat told us to, but would do it when revision would do less harm than non-revision. That is the proposition of the Republican Party—not to enter upon that disturbing question upon the eve of a great national contest, but to take it up soberly, when we can deal with it properly. Therefore, I appeal to you not to settle that question, involving the industrial conditions of this country, in an hour's deliberation, when the thermometer is above 90 degrees, and we are all in a hurry. Better leave it to Congress. You trusted us once, kindly trust us again. That is the opinion of President Roosevelt. That is the opinion of Speaker Cannon. That is the opinion of all the great leaders in the Republican Party of the nation. Let us not here, today, therefore, sound a discordant note, but let Ohio fall in line, keep step with the music of the Union and march with the old Republican Party to victory. (Great applause.)

PHONETIC SPELLING.

Now, I won't detain you any longer. (Cries of "Go on! Go on.") I am afraid I have gone on too long already. (Voices: "Go on!") There is then another word. I am a little touchy on some things. When I am told that I am to stand for whatever some other man stands for no matter what it may be, I am not going to subscribe to it. (A voice: "You are right," and great applause.) It has been my fortune to stand with President Roosevelt on most of his recommendations, but I can not go with him on all of them. I draw the line, for instance on phonetic spelling. (Great laughter.) Phonetically it may be all right, but aesthetically, it is to me impossible. I can think of but two classes of people who would be benefited; one of them a very large class, the class that can not spell. No more bad spelling if we adopt that way. That class would be benefited because they could no longer be criticised; and the other class is the school book ring. They would have to reprint all the school books right away. No, I am not for it and I don't think President Roosevelt will think any the less of me for speaking right out in meeting and saying I am not for it. (Laughter.) And it would not make a bit of difference to me if he did. (Great applause.)

RIGHTS OF SENATORS.

Now, if I must go on, let me speak of another matter—

I have always thought it was a great honor to be a United States Senator from Ohio. Why? Not because of the salary, not because of

* Mr. R. F. Wolfe, owner of the *Ohio State Journal*, was a shoe manufacturer, an ardent advocate of free hides and an outspoken champion of the "less cordial" policy.

the position, but because I have always understood that when my constituency elected me, it was because they had the impression, at least, that I possessed the qualifications of a Senator (great applause); that I had some ability, and that I had good character; that I would stand hitched, did not need to have somebody overlooking me, and that when a great question arose I would be expected, speaking for this mighty and intelligent constituency, to bring to bear, in the discussion of it, all those qualifications. I never understood that somebody was to tell me how to vote, either at that end of the line or this end of the line; especially not about great, profound, constitutional questions that lawyers differ about. I thought I was to work that out; that I was to speak for you. I have pursued that policy. If that is not right; if, on the contrary, a man is to be rebuked because he exercises the qualifications with which he is possessed, then you take all the honor away from the office, and, so far as I am concerned, you can take the office with it. (Tremendous cheering and voices: "We will endorse you.") No office has any value, in my opinion, unless it carries with it the right to the man holding it to go according to his own judgment and discharge, according to his sense of duty, free and untrammelled, the official obligation to support and maintain the Constitution of the United States, which he takes when he enters upon his office. (Renewed cheering.) I guess that is enough. (Cries of "Go on! Go on!")

Well, then, we are going to have a great convention tomorrow; in some respects the greatest in the history of the state, for it is to settle, among other things, the question I have last adverted to. Of course, personally, I have some interest in that question, but if I had no interest except that which is personal, I would not have the temerity to come here and ask you to endorse me. I am here representing a great principle, as I understand it, that reaches, as Governor Herrick said about the Republican Party, far away and beyond any individual. It is a rule of action that great parliamentarians and legislators have contended for and have observed from the day when Edmund Burke, in the English Parliament, defended himself upon the same ground I am contending for, down to the latest expressions on that subject in both the House and the Senate of the United States. Why, Mr. President, it is the man who does not accept everything as it is ordered, but looks into it, examines it upon conscience, according to judgment, and discusses it according to his ability, that renders the greatest service in legislation. (Voice: "That is right.") The man who is so regular that he has no opinions of his own is no account anywhere. (Applause.) No man in Congress has done more to make safe, sound legislation than Theodore Burton. (Vociferous applause.) I kick every once in a while, whenever I think I ought to, and I don't ask anybody's permission, and he does the same way, and I honor him for it, for I believe he always acts, although frequently not in accordance with my judgment, according to his own judgment and his own good conscience. Freedom of thought and action are living truths of Republicanism. (Applause.)

Now, before closing, allow a word about the Democrats. A year ago their great leader started to take a trip around the world. He had

been twice beaten for the Presidency, and nobody thought of him as a dangerous factor in politics—ever to be such again. But as he left, and as he traveled, they watched, and the Democratic heart began to swell—to swell with pride—to think of its most distinguished leader traveling abroad. (Laughter.) He was going clear around the world. (Laughter.) He was going to see everything in sight. (More laughter.) When he passed out of the Golden Gate they stood on tiptoe to look after him. And when he arrived in the Orient and visited China and Japan and the Philippines and the Straits Settlements and India, he grew awfully large in their minds. It seemed as though the further he traveled and the less he said the greater he grew. (Tremendous laughter.) He soon became a giant, and he kept still so long they commenced calling him, not only “the peerless leader,” but “Bryan, the conservative.” No more the “radical”—the conservative. They thought here at last is one, the third time being the charm, who will surely “lead us out of the wilderness.” And so, State after State endorsed him for 1908, and when the time was fixed for his arrival in New York, Democracy emptied itself on that poor, victimized city. Fifty thousand of them were there to see a man who had really crossed the ocean and who had become conservative. (Laughter.) They had a great time. Our distinguished friend, Tom L. Johnson, was spokesman. (More laughter.) They nominated him for the Presidency, and Mr. Bryan, in a short speech of an hour, accepted the nomination, defeated himself at the polls, and fastened the Republican Party in power for a generation to come. (Tremendous cheering.) In the slang phrase of the day, he punctured his own tire and the wind all escaped. (Laughter.) You ought to have seen that 50,000 Democrats coming away from New York. I saw some of them. They went heads up, eyes bright, full of good cheer, full of confidence. They came away in despair, their party split in twain, because their peerless leader had not proven conservative, but more radical than ever. He proposed that we should now take another step, one I have been looking for for a year, for the government to buy and own and operate the railroad trunk lines and the States to own and operate the State lines.

Now, that would be a sorry mess, wouldn't it? Well, I am not going to discuss it; too big a subject. It is enough to say his own greatest party leaders already proclaim their dissent. One of them, Senator Bailey of Texas, announced that maybe Mr. Bryan can be the candidate, but he shall not make the platform. What is to be done? All hope seems to be gone for that party. I see nothing for us to do except to do as Governor Herrick suggested, instead of sending twenty Republicans to Congress, let us send twenty-one this time, just to see how it will look.

Now, gentlemen, thanking you for your indulgence and your patience, unwilling to trespass longer, I bid you good evening. (Applause.)

Another year passed and a great change had been wrought. On the assembling of Congress in December next following after the Dayton Convention the Brownsville debate was in-

augurated, to be followed by the adoption of my Resolution for an investigation, the Gridiron Club dinner-debate, and the open proclamation of war for my "elimination" and the inauguration of hostilities by the appointment of Judge Sater to the United States Judgeship. In addition, the financial panic of 1907 had broken upon us, and was yet in full force.

These events were accompanied by a spirited canvass of the State during the summer, in the course of which Secretary Taft made a number of speeches in which he reiterated his tariff views and said some other things that I did not think helpful to the cause of Republicanism. To all of which I made answer from time to time as occasion seemed to require.

While this speaking campaign was satisfactorily progressing in the open I was being undermined and double-crossed by occult methods of which I had no knowledge until confronted by their results; and that was too late to prevent or counteract them.

The political organization of Hamilton County, headed by Mr. George B. Cox, one of the ablest and most efficient local leaders our State has ever produced, was then in the very zenith of its power. The Hamilton County delegations to State Conventions were so large that acting as a unit they practically controlled the politics of Ohio.

Secretary Taft had openly and virulently assailed Mr. Cox, and his organization, in a speech made at Akron, in 1905. On this account I supposed that under any and all circumstances this powerful factor would be hostile to Mr. Taft, and his political ambitions, whatever they might be.

I had always been fortunate enough to have that support, and had, as I supposed, every reason to believe I would continue to have it, for the time being at least,—especially as against Mr. Taft.

I was incredulous, therefore, when I observed some indications to the contrary, and remained so until suddenly undeceived by the receipt through the mails from some unknown friend, unknown then and still unknown, of the following copy of a telegram from Mr. August Herrmann, Mr. Cox's Chief

Lieutenant, to Mr. C. P. Taft, at Point au Pic, Canada, where he was spending his summer vacation:

HON. C. P. TAFT,
Point au Pic, Canada.

July 27, 1907.

Bader, Durr and Hynicka home. When Taft resolution is introduced on Tuesday an amendment will be offered also indorsing Foraker. This will no doubt be supported by the two members of Hamilton County. If the amendment is defeated and the Taft resolution presented squarely to the committee, both members from here will support it. Under the circumstances my suggestion would be to have your people defeat the amendment without the votes from Hamilton County and then put the other resolution through. By all means treat this information confidentially, especially its source.

AUGUST HERRMANN.

The State Committee meeting was held so soon after I received this warning—only a day or two—that I had no time to consider what to do, even if I had been able to do anything to prevent the action proposed. Accordingly the program was carried out on time and to the letter, just as suggested by Mr. Herrmann in his telegram.

From that time forward Mr. Cox and his organization openly and zealously supported the cause of Mr. Taft, and it is no exaggeration to say that Mr. Taft was more indebted to Mr. Cox for a practically solid delegation to the National Convention from Ohio in 1908 than to any other single individual.

It was with Mr. Herrmann's telegram on my files, and the recollection fresh in mind of the co-operation of Mr. Cox and his organization with the Taft forces proper, that the following correspondence was had with Mr. Charles D. Hilles, while he was Secretary to President Taft, and doubtless, in view of the ways and duties of Secretaries, with Mr. Taft's full knowledge and approval, of all Mr. Hilles said:

December 7, 1911.

Dear Sir:—A friend writes inclosing what he says is a copy of an extract from a letter written by you to Mr. Frank P. MacLennan, *Topeka Daily State Journal*, Topeka, Kansas.

Will you kindly advise me whether what I have so received is a correct copy of what you have written to Mr. MacLennan or anybody else? I enclose a copy.

CANDIDATE FOR THE PRESIDENCY 385

I refer particularly to your statement of what occurred in Ohio in 1908.

Very truly yours, etc.,

J. B. FORAKER.

HON. CHARLES D. HILLES,
White House,
Washington, D. C.
(Personal.)

Enclosure mentioned.

Extract from letter to Frank P. MacLennan, *Topeka Daily State Journal*, Topeka, Kansas, signed "Charles D. Hilles, Secretary to the President," bearing date of "The White House, Washington, June 2, 1911:"

It was inconceivable that the press should have questioned the President's courage and resolution, for his public record was well known. He had rendered a decision adverse to labor unions, which put an end to secondary strikes; he had faced a state of affairs in the Philippines which would have tried any man's soul; he had invaded his home State of Ohio at the crisis in a political campaign *to hold George B. Cox up to public execration; he had invaded Ohio later and wrested control from Cox and Foraker and Dick*; he had indulged in an impolitic denunciation of Mr. Gompers in the campaign; and as President, had convened Congress in extraordinary session to reduce tariff schedules, a step which no President since Grover Cleveland had taken. It was inevitable that a conflict would result in the Congress; that delays would occur; that business would halt and the ultimate result would be disappointing. He consented to play an ungrateful part, a role almost as ungrateful as that of the villain's in the play.

THE WHITE HOUSE,
Washington.

December 11, 1911.

My Dear Sir:—I have your letter of December 7th, inclosing a copy of an extract from a letter which it is said that I wrote on June 2, 1911, in which the following statement occurs:

"It is inconceivable that the press should have questioned the President's courage and resolution, for his public record was well known. . . . he had invaded Ohio later and wrested control from Cox and Foraker and Dick."

You ask me whether I made the statement in question. I am bound to say that I did. I have been of the opinion that it was a matter of public knowledge that when the President decided in 1907 to become a candidate, a controversy was precipitated in Ohio, in which no man would have engaged who was lacking in fighting qualities. I sincerely hope the reference to that spirited contest has not given offense.

Sincerely yours,

HON. J. B. FORAKER,
Cincinnati, Ohio.

CHARLES D. HILLES.

December 15, 1911.

Dear Sir:—Referring to your note dated the 11th inst., but only just now received, I only wanted to learn whether, with your attention specifically called to the sentence mentioned, you would still adhere to it as a truthful statement?

I was not aware until I read your thrilling enumeration of the courageous achievements of the President, that any one had ever asserted or even intimated that in the "spirited contest," to which you refer, Mr. Cox took any part, except as a supporter of the President.

Very truly yours, etc.,

J. B. FORAKER.

HON. CHARLES D. HILLES,
White House,
Washington, D. C.

THE WHITE HOUSE,
Washington.

December 18, 1911.

My Dear Senator Foraker:—I have your letter of Friday, and wish to again assure you of my deep regret that the reference to the Ohio controversy of 1907 was offensive to you.

I can only reiterate that it was not my intention to give offense, and I did not at that time believe the sentence in question was susceptible of the construction you have since placed upon it.

Sincerely yours,

CHARLES D. HILLES.

HON. J. B. FORAKER,
Cincinnati, Ohio.

Subsequent investigations and disclosures showed that Mr. Herrmann's telegram was, as it shows on its face, only one of a number of similar communications that had been passing between the same parties, by which it was shown that a majority of the State Central Committee had been for some time prior to the date of the telegram "brought into the Taft camp," and that the Taft managers were, and for some time had been, fully prepared to have the Committee at its meeting take whatever action Mr. Charles P. Taft might think desirable.

While this correspondence was in progress Mr. William H. Taft was also spending his summer vacation with his brother at Point au Pic, Canada. This fact makes it fair to assume that he was kept fully informed.

If so, it was with knowledge that he was risking nothing as to his own endorsement that he wrote a letter, July 20th, to "a friend in Ohio," and sent a copy of it to Presi-

dent Roosevelt "for such future use" of it as he might see fit to make—a privilege of which he availed himself by publishing it in connection with an interview given out by him in 1908, for the purpose of supporting and illustrating the "fearless independence and righteous unselfishness" of Mr. Taft, as shown by the statement in his letter that, because of the *principle* involved, he would not accept an endorsement as Ohio's candidate for the Presidency if that endorsement must be coupled, as some one had proposed, with an endorsement of me as Ohio's Republican candidate for re-election to the Senate, not because of opposition to me personally, but because of my course with respect to the Rate bill and the Brownsville matter.

When, in accordance with this "fearlessly independent and righteously unselfish" letter, the committee endorsed him and refused to endorse me, I challenged the authority of the committee to take such action in a public letter to the Honorable C. B. McCoy of Coshocton, calling attention to the fact that the Dayton Convention, composed of between eight and nine hundred duly chosen delegates, representing collectively and in detail all the counties of the State, desired to express themselves on the subject, but had desisted therefrom at my request because not chosen with reference to that question, and because, therefore, such action would be beyond their authority and jurisdiction, and insisting that if that was true as to the convention, as all at the time agreed it was, much more was it true of a committee of only twenty-one members not one of whom had been chosen with reference to his Presidential preference. My letter to Mr. McCoy was well received, and a decided resentment of the committee's action was manifested all over the State.

The result of this was that later, November 20, 1907, after I had returned to Washington, the Advisory and Executive Committees of the Ohio Republican League, together with their general officers, numbering in all about one hundred members, and representing every county in the State, assembled in Columbus and adopted the following resolutions, which

were offered by ex-Lieutenant Governor, now Senator Warren G. Harding.

As showing the spirit of the occasion I quote as follows from the press report of the proceedings:

REMARKS OF FORMER LIEUT. GOV. WARREN G. HARDING.

Mr. Chairman and Gentlemen:—Under the head of "The Good of the Order" I beg to submit to your consideration the following resolutions:

The Republican League of Ohio, born in the enthusiastic devotion and patriotism of the young manhood of the Republican Party, pledges anew its fidelity to Republican policies and doctrines which have made the republic prosperous and great. It avows its loyalty to that robust Republicanism expounded by its great leaders of the past—John Sherman, Marcus A. Hanna and William McKinley; and as advocated today by their able and distinguished successor in leadership, Joseph Benson Foraker. (Applause and cries of "Read it again! Read it again!") (Renewed applause.)

On this occasion the general officers of the League, together with its Advisory and Executive Committees, representing the eighty-eight counties of Ohio, in session assembled, believe it opportune to declare:

That, in our opinion, the good of the Republican Party requires that we should positively announce that we have no sympathy whatever with the proposition that has been recently advanced, that Senator Joseph Benson Foraker be "eliminated" and retired from public life because he was not able to agree with President Roosevelt as to the rate bill, or joint statehood for New Mexico and Arizona, or about the Brownsville matter. (Applause.)

On the contrary, we believe he was right in opposing joint statehood as he did, except on condition that a majority of the citizens of each territory should vote therefor, in which requirement the President now concurs; and we believe he was right and we thoroughly approve his action in demanding that the helpless negro soldiers of the Twenty-fifth United States Infantry who had served their country with great valor and distinction should be given an opportunity to testify in their own defense that they were not guilty of the crime for which on purely ex parte testimony they have been discharged without honor. (Loud and prolonged applause.)

Although one of the earliest and most earnest advocates of the policy of Governmental supervision and regulation of interstate commerce and the railroads and other corporations engaged therein, Senator Foraker has steadfastly refused to be forced by the public clamor to support measures relating to that subject that appeared to him unconstitutional and of such general character as to jeopardize the prosperity of the American people (renewed applause); and a comparison of the great good that has been wrought under the Elkins law, which Senator Foraker helped to frame and enact, with the bitter disappointments that have been realized under the rate bill, which he opposed, shows that there was abundant ground for difference of opinion concerning the

latter measure, and strikingly illustrates the value to the whole country of such qualities in a public official. (Loud applause.)

As a volunteer soldier of the Union Army, as a Judge of the Superior Court of Cincinnati, as Governor of Ohio, as United States Senator, and during all the years of his long public career as Executive, Legislator and Judge, and as one of the foremost champions of the great principles of Republicanism, he has been thoroughly tried and his name has become familiar to the whole American people.

His record is one of unswerving devotion to his country and to his party.

While distinguished for his loyalty to both, he is equally noted for his conservative judgment and the courage with which he maintains what, in his opinion, duty requires.

Entertaining these views we send him greeting and assure him as he returns to his labors at Washington that he has our unqualified confidence and esteem, and we not only pledge him our loyal support for his re-election to the Senate, but we further declare that he is our choice as the Republican candidate for President of the United States in 1908. (Loud and long-continued applause.)

A voice: Hope that will hold you for awhile.

Governor Harding: With him for President the policy of protection to American industries and American labor would not fear the attacks of its enemies, whether made in the open by avowed free traders, or by those who, in the guise of friends, profess to improve it by a downward revision of duties; and every American citizen, whether white or black, and no matter how humble, would feel and know that there would be a fearless enforcement of the laws that have been enacted for the protection of his rights. (Vociferous applause.)

At this time of business depression and painful uncertainty as to political conditions, his nomination would be especially helpful. It would arouse the old-time Republicanism, restore confidence and insure victory.

It is for such reasons we present Joseph Benson Foraker as our standard bearer, and appeal to Republicans everywhere to join us in his support. (Loud applause.)

Gentlemen, in the name of that immortal grand Army which saved to us the Union that we boast of and of which Army Senator Foraker is its most distinguished representative in public life; in the name of the humble black man; in the name of the believer in a "Square Deal," whether it is for the humble citizen or the distinguished statesman; in the name of that fighting band of Ohio Republicans who caught the inspiration as he bore the banner aloft twenty years ago and have marched with him to victory triumphant time and again; in the name of that Republicanism which we wish to make triumphant in 1908, I move the adoption of these resolutions. (Applause long-continued.)

Many other speeches in character similar to the expressions of Senator Harding were made in connection with the occasion by leading active Republican members of the organization.

When furnished with an official copy of the resolutions I answered as follows:

UNITED STATES SENATE.

November 28, 1907.

HON. CONRAD J. MATTERN,
Vice President Ohio Republican League,
Dayton, Ohio.

Dear Sir:—I write to acknowledge the receipt of your letter of the 22d instant with copy inclosed, as stated, of resolutions adopted by the Advisory and Executive Committees of the Ohio Republican League of Clubs at a joint meeting held at the Neil House in Columbus, November 20, denouncing the proposition that I should be "eliminated" from public life, and relegated to private citizenship because in the discharge of my duties as a Senator I have been unable in three instances to agree with President Roosevelt, and pledging me their support as a candidate for re-election to be my own successor, and also declaring that I am their choice as a candidate for the Presidency.

I am informed that there were ninety-eight members of the committee, out of a total membership of 105 present in person or by proxy, and that the resolutions were adopted by a unanimous vote, and with much enthusiasm.

The names and addresses of those present, as published in the newspapers, show that all sections and counties of the State were represented, and that among these representatives are many who have for years been well known to the whole State as prominent leaders of the Republican Party.

I would not be insensible to such a mark of confidence and esteem if I could be, and I could not be if I would.

But I do not want to even appear to be a candidate for two offices at the same time, and therefore forego the double honor proposed, and with heartfelt appreciation accept the support for the Presidential candidacy which the committees have so generously tendered.

Nevertheless, I want to say that far beyond anything personal to myself, I am gratified by the action taken because it is a flat rebuke to the suggestion that the office of United States Senator is to be stripped of all the real honor attached to it by making its incumbent a mere agent to register the decrees of somebody else instead of the representative of a State charged with the constitutional duty of legislating according to his best judgment for the welfare of a great nation, accountable to his constituency for his acts and votes, but to nobody else.

I regard it of far greater importance to uphold and protect the dignity and usefulness of the Senatorial office than that any particular man should be chosen to fill it.

As our fathers created it the place is one of the most important in the Government, and any man might well feel highly honored to hold it, but if it is to be degraded into a mere agency, no self-respecting man can desire to hold it.

I not only stand for the broad principles involved, but also stand ready to submit to my constituents for their judgment not only my

action in the three instances when I was unable to agree with the President, but my entire record. I may have made mistakes, but no speech or vote or other act will be found that was not in accordance with a conscientious judgment formed by the aid of the best light at the time attainable.

My action on the question of joint statehood and in the Brownsville matter your committees have approved, as I believe the great majority of Republicans do everywhere.

There are doubtless yet many who criticise my vote on the rate bill, but if the assurances with which my mail is filled, coming as they do from every section of the country, are not misleading, the number of these critics is rapidly diminishing.

In the debates on that measure I took pains to point out that if the Government took upon itself the duty and responsibility of making rates, it would of necessity have to determine not only how much a railroad should be allowed to make, but also how much it should be allowed to spend—how much for operation, for extensions, for equipment, and for every other item of necessary expenditure, all of which it is impossible for a government to do successfully and satisfactorily, and that the result would inevitably be that just at the time when a rapidly increasing business for the roads was making it necessary for them to raise hundreds of millions annually for increasing their tracks, cars, and general facilities we would impair the confidence of investors in their stocks and bonds and thereby not only make it impossible for the roads to sell the additional securities necessary for such purposes, but lead many of the holders of them, both at home and abroad, to dispose of what were already outstanding, and that in consequence the market would be so largely oversupplied that their values would shrink, dragging down all kinds of securities with them until panic and disaster would take the place of confidence and prosperity.

To say "I told you so" is always ungracious, but it is, I trust, permissible to point out that from the day the rate bill passed the trend has been in the direction predicted, and while other things have contributed, that measure has a full share of responsibility for the unhappy financial and industrial conditions with which we have been overtaken.

While there should be efficient supervision and regulation of interstate commerce, and the carriers and corporations of every kind engaged therein, it will become more and more manifest as time passes and results are developed that this supervision must be sane and conservative—consistent with the Constitution and with sound common sense.

The moral standing of the business men of this country has always been high. It was never so high as it is now. There is consequently less occasion than ever before to restrict commercial freedom by statutory details of management and surveillance that are apparently framed on the theory that all men are criminals. Such legislation hampers enterprise, retards business activity, and discredits the whole nation.

Broad principles should govern in all legislation, and the enforcement of the laws should be left to the appropriate tribunals without unauthorized interference from any source, and above all things there should be no toleration of the idea that our Constitution has become in part a misfit and obsolete, and that it must be changed and vitalized, by judicial interpretation, or by the mere assertion of public sentiment

in support of that which may for the moment be desired, although manifestly unauthorized by its provisions.

From the beginning of our Government our Constitution has been recognized by all the world as one of the wisest and most nearly perfect organic laws ever framed. Under it we have grown and prospered as no other people ever has. We should be slow to condemn it or to find fault with it, but if we find it inadequate, or that for any reason it should be changed, it contains a provision in accordance with which the people can amend it. No one should think of amending it in any other manner. To change it in any other way would be the beginning of the end. In my opinion no amendments are necessary to enable the Government to efficiently exercise all its powers, and that no additional powers are necessary to the proper supervision and regulation of every matter that is the legitimate subject of legislation.

I note also that the committees refer to the Republican policy of a protective tariff and to the enforcement of the laws for the protection of all the rights of citizenship.

At another time I may take occasion to speak on these subjects at some length, but it is sufficient for present purposes to remark that with our surplus revenue diminishing and our enormous expenditures increasing, it would be like adding the last grain of sand to undertake to tinker with the tariff. Under the present tariff laws we have had the greatest prosperity any country has ever enjoyed, and it has been because of the strength thus given us that we have stood up as well as we have under the decline in values amounting to billions of dollars that has at last brought business depression to employers and idleness to thousands of employes. It is to the beneficent results of that policy as expressed in the Dingley Law that we must look for one of the necessary factors in the work of restoring prosperity.

There will doubtless come a time when changes in that law can be made to advantage, but that time is not now.

So far as the protection of the equal rights of citizenship is concerned, my views are well known.

When the Republican Party falters in that high duty, it will fail and go out of power, and it will deserve defeat.

What Lincoln and Grant and the great men of their day did was not done in vain. Their achievements will endure, and every Republican who honors their memory and glories in their deeds should be proud to uphold their work.

When the National Committee shall have issued the call for the next Republican National Convention, I shall, as heretofore announced, formally request the State Central Committee to embody in its call for the next State Convention a requirement that all delegates to that convention shall be chosen by a direct vote of the Republican electors of the State at duly authorized primary elections, held in accordance with the statutes applicable thereto.

Very truly yours,

J. B. FORAKER.

Everything moved along well so far as I had knowledge for a period of about sixty days, when suddenly, without the

slightest notice or intimation beforehand, Senator Harding, in a double-leaded editorial published in the *Marion Star*, of which he was the owner and editor, withdrew his support from me and transferred it to Mr. Taft.

He set forth a number of reasons that were satisfactory to himself, and no doubt conscientious and sincere on his part, which he repeated to me in a letter written contemporaneously with his publication.

My friends and I were both surprised and chagrined, but we accepted the situation with the best grace possible. It required no prophet to foretell that the result of such a defection would be disastrous, not so much because of his personal strength as because the same causes that occasioned the Hamilton County defection and now his defection would similarly affect others; but I excused him on the ground of sincerity and good intentions and because I thought that under the peculiar circumstances I ought to be generous in judging friends, even those who did things that were injurious to my cause, for I recognized that it involved some sacrifice for them to stand by me with the National Administration and all its forces and influences arrayed against me in open and active hostility.

What followed is history that need not be repeated; and yet I can not deny myself the pleasure it gives me to record here that I had some friends in Ohio who could not be cajoled, persuaded or otherwise influenced to desert my cause. Among them was the Honorable C. B. McCoy, editor of the *Cochocton Age*, who was elected a delegate to the convention from his district and who, with three other delegates from Ohio, stood for my nomination to the last, and voted for me in the convention. Mr. McCoy placed me in nomination in an eloquent and most excellent speech. He was a real hero who preferred to go down to defeat and political ostracism, if necessary, with colors flying, rather than abandon his convictions and desert a friend, although to do so would secure him favor with two administrations. In other words, he was a manly man, and I trust that some time in the future his abilities, nobility of character and loyal Republicanism may be fittingly recognized by his party associates.

Mr. McCoy's speech was eloquently seconded by the Honorable W. O. Emory of Georgia, an able representative of the Negro race.

When the roll was called sixteen votes were recorded in my favor; not very many, but probably as many as any other candidate whose name was presented to the convention except Taft would have received if there had been made to him such opposition as that to which I was subjected.

I continued in the race to the end, although I knew long before the convention met that there was not the slightest chance for my nomination. My hope was that by the combination of different elements we might be able to nominate Senator Fairbanks or some other Republican with whom we would be better satisfied; but in spite of all we could do to the contrary, Mr. Taft carried off the nomination in triumph and in the following election was duly chosen to be President of the United States.

When his nomination was announced I sent him the following note of congratulation:

WASHINGTON, D. C., June 19, 1908.

Dear Mr. Secretary:—Although I fear it may be unwelcome and probably misunderstood it is nevertheless my pleasure to avail myself of my privilege to send you heartiest congratulations and best wishes for success in November.

Very truly yours, etc.,

J. B. FORAKER.

TO HON. W. H. TAFT.

To which he answered as follows:

WAR DEPARTMENT.

WASHINGTON.

My Dear Senator:—I assure you that your kindly note of congratulation gave me the greatest pleasure and I thank you for it from the bottom of my heart.

I have never ceased to remember that I owe to you my first substantial start in public life, and that it came without solicitation.

With very best wishes, believe me, my dear Senator,

Sincerely yours,

HON. J. B. FORAKER,

Washington.

June 19, 1908.

WM. H. TAFT.

During the campaign I made a number of speeches in support of his candidacy prior to the 2nd day of September, when I spoke with him at a large mass meeting in Toledo.

Shortly afterward I was invited by his representative, Mr. A. I. Vorys, who came to my office for the purpose, to preside at a meeting to be held in Music Hall, Cincinnati, September 22nd, to be addressed by Mr. Taft. Mr. Vorys said it was the special desire of Mr. Taft that I should preside and introduce him, and that he was making the request as his immediate representative sent by him to me for that purpose. I accepted, and the meeting was thereupon duly and widely advertised.

In the papers of September 18th appeared an account of the attacks made on me by Mr. William R. Hearst in his Standard Oil speech at Columbus the previous evening. As already shown, I immediately made answers to these attacks that should have satisfied, as they did, all real friends, and many who were not classed as such, including Democrats as well as Republicans, as my files of letters and telegrams and marked editorials from hundreds of the best men and most important newspapers in the country abundantly show, that I would be able to meet successfully any charge Mr. Hearst might make. Nevertheless, the same papers that carried my answers printed intimations that Mr. Taft thought I ought to withdraw my acceptance of the invitation I had accepted at his request to preside at the approaching meeting advertised for the 22nd. I could not believe it possible that my long-time friend could doubt either my integrity or the truthfulness and sufficiency of my statements, or that he would not be glad to show in any proper and legitimate way his personal regard and friendship to which he had so often alluded when acknowledging favors I had shown him, but deeming it my duty to relieve him of all embarrassment by withdrawing from the meeting unless he should see fit to re-invite me, I sent him the following self-explanatory note:

CINCINNATI, OHIO, September 19, 1908.

My Dear Judge:—Having read in the newspapers that some of your friends, and possibly you, are in doubt as to the propriety of my speak-

ing with you at Music Hall next Tuesday night I have concluded not to attend the meeting. I take this action not because I deem the answers I have made to Mr. Hearst's charges insufficient, nor because of any lack of loyalty to your cause, but only because I do not wish to do anything that might injure the cause or embarrass you personally.

Very truly yours, etc.,

HON. WILLIAM H. TAFT,
Cincinnati, Ohio.

J. B. FORAKER.

Senator W. Murray Crane of Massachusetts, and Senator Charles Dick both happened to be in Cincinnati at that time. Both called at my office to see me. I showed them the letter I had written and was intending to send to Mr. Taft. Upon their suggestion, I think it was, I gave it to them to present to him and to receive from him such note in answer as he might be pleased to write.

They returned later in the day and told me that Mr. Taft was very much "disturbed and embarrassed." They said there were "indications" that he was in communication by telephone with President Roosevelt, and that President Roosevelt was, in their judgment, responsible for the fact that Mr. Taft desired to be excused from doing more than expressing to them the hope that I would be willing to confer with the committee with respect to the meeting and take such course as the committee might recommend.

I interpreted this to mean that Mr. Taft preferred I should not attend the meeting, as he had requested me to do, and immediately canceled my engagement.

At the same time I canceled all my other engagements for speeches during the campaign, of which I then had a number.

I was both surprised and mortified by Mr. Taft's action for it seemed to give credence to Mr. Hearst's charges and to discredit thereby the answers I had published.

I made to the Senatorial messengers some appropriate and human-like comments, but did not say anything bad—at least nothing like what the case properly called for—for I remembered that he was in the midst of a campaign, and that as the candidate of the party he probably thought it was his duty to be prudent and careful, even to the point of sacrificing a friend, lest he make a mistake that would

be prejudicial to the party he represented,—a conviction that was strengthened, when a few days later he said in a published interview that he had no comments to make about me or Mr. Hearst's attacks "because he could not strike a man when he was down"—a cheerful and comforting observation that showed the quality and measure of the friendship and gratitude he had so frequently expressed.

CHAPTER XLVII.

SOME OF THE CAUSES OF THE TAFT COLLAPSE.

RECURRING now to the humiliating defeat sustained by President Taft in 1912, the cause of it is commonly attributed to Colonel Roosevelt, and with most people he alone is held responsible therefor.

Judging from purported interviews with him published in newspapers, he is probably glad to have this responsibility laid at his door. Nevertheless the charge is correct only in part. There were other causes.

I feel that I should mention some of them—not in a spirit of unkind criticism, but in a good-natured effort to hold the scales of justice even between my old-time friends. I hope nothing I may say will offend; and that if it should it will be remembered that “faithful are the wounds of a friend”—or of anybody else who tells the truth.

The causes to which I refer were quite aside from anything done by Colonel Roosevelt.

They constituted a trouble of President Taft's own making. Before election, and more particularly since his defeat, many of his speeches, considered as abstract expressions, have been noteworthy for their excellence. But while in office he seemed unable, when occasions arose, to recognize concrete cases for the application of his own ideas. Whether this was due to inability to see or mere careless indifference is not entirely clear. He himself was fully conscious of the fact that he had some such trouble, and undertook, in a speech made shortly after his defeat, to explain its nature. It was his opinion, according to newspaper report, that he has “too much love of personal ease.” He should be the best authority as to himself; but whether he is or not, there was a popular acceptance of his diagnosis, which it was supposed referred to his well-

known fondness for golf and his almost constant traveling about over the country in attendance upon all kinds of public occasions, in connection with which his presence and entertainment were naturally much exploited in the papers, not merely as news items, but for local advertising purposes.

All summer long the papers published daily accounts of the games played and the scores made, all in the greatest detail, until the common people at least were sick and tired of it, and very freely so expressed themselves about it.

Even worse was their impatience with his journeying and banqueting to and fro through the land.

The result was that eventually the impression very generally prevailed that he spent too much time seeking his own pleasure and not enough studying the nation's needs.*

This no doubt cost him some votes in 1912, as he seems to think, but there were other causes of more dignity and moment why he lost the united support of his party and was defeated for re-election—without regard to his trouble with Colonel Roosevelt. I refer to causes that had nothing to do with their quarrel, but which created among Republicans a feeling of

* As confirmatory of the text I quote from Mr. Dunn's "Gridiron Nights" the following from his account of one of the Gridiron dinners given in 1911:

"President Taft received more attention than he desired at the dinner. There were references which he did not enjoy. Not only was he touched up in the Mother Goose book, but there was a more pointed thrust at his well-known propensity to travel. Several members of the Club came in with a large roll of paper, and, in reply to a question, said that it was a two-hundred-and-fifty-thousand-mile ticket for President Taft. It was unrolled and just as one end was about to be placed in Mr. Taft's hands it snapped back. 'This is a return ticket,' was the explanation. Then the lights went out; there was the clanging of a locomotive bell and a picture flashed upon a screen showing the President and his usual traveling companions and paraphernalia on a private car, labeled 'the Summer White House.'"

In his account of another dinner Mr. Dunn says the Music Committee of the Gridiron Club sang a song, to the tune of "Marching Through Georgia," that referred to "the many banquets, luncheons, etc., which had been tendered Mr. Taft," composed of the following words:

"Sound the good old dinner horn, we'll sing another song
About the trip that Taft once made, when, with digestion strong,
He ate his share of everything that they would bring along
As we went eating through Georgia.

Hurrah, hurrah, we sound the jubilee;
Hurrah, hurrah, 'twas something fine to see;
We put away three meals a day
And sometimes three times three,
As we went eating through Georgia."

indifference that made it easy to divide and overthrow the party. I shall venture to name some of them.

To begin with, he appointed two Democrats to be members of his Cabinet, MacVeagh of Chicago to be Secretary of the Treasury, and Dickinson, born in Mississippi, and at the time of his appointment a citizen of Tennessee, to be Secretary of War. Nobody objects to a suitable recognition of the minority party, but if there is any place where a Republican President does not want Democrats, and where a Democratic President does not want Republicans, it is in the Cabinet, where political questions as well as public affairs are necessarily considered. There is an impropriety about such a relationship that the average President or the average Cabinet officer would avoid. It was, therefore, a shock to Republicans the whole country over when Mr. Taft, outdoing President Hayes, who took one Democrat into his Cabinet, started with two. It impaired confidence in the expectation that we were to have a Republican administration.

In the second place, he never was sound on the tariff until too late to do any good. At least there was never a time after he came into political prominence when he did not seem to think the tariff ought to be revised downward until a candidate for re-election. Then, finding the tide running against him, he seemed to realize for the first time the importance of this policy and that his defeat would imperil it. His appeals then put forth for support on that account were almost frantic. They would have done credit to "Pig Iron" Kelly in his palmiest days. But all in vain. His utterances were looked upon as prompted by a sort of death-bed repentance, in which nobody had any confidence.

"The devil was sick—the devil a monk would be.
The devil was well—the devil a monk was he."

Everybody felt that his conversion was due to the compulsion of circumstances and that when such compulsion would be removed by re-election he might revert to his former convictions.

He commenced his tariff-reform talk in a speech at Bath, Maine, as early as 1905, in the first campaign in which he participated after his return from the Philippines.

There always was a small percentage of Republicans, composed chiefly of importers, professors, travelers for pleasure, magazine writers and political dudes, who believed, talked and wrote in favor of a low tariff, which is only another way such Republicans had of saying they were free traders. This percentage was, however, never very formidable until Mr. Taft, a Cabinet officer, became the public champion of their views. Foreseeing that such talk, unanswered, would lead to trouble, I took occasion, in a number of speeches, to answer as well as I could. What I said generally is well represented by what I said at Franklin, Ohio, July 19, 1907. I quote as follows:

They (referring to these tariff reformers and having special reference to the speeches Mr. Taft was then making) seem to think there is something the matter with the tariff, and that it ought to be changed, and they are, therefore, demanding an immediate revision.

Tariff schedules are not intended to stand forever. What suits at one time may not suit at another. If the Dingley Law were to be made new today doubtless some of the rates of duty would be made other than what they are. But it does not follow from this that there should be an immediate revision. It is a serious matter to tinker with the tariff.

One man wants one thing, and another man wants another. Such a work once entered upon would, in the nature of things, involve all the rates of all the schedules, for when the whole country would have opportunity to be heard no item would escape criticism. It might be that a more satisfactory tariff law would be made than is that which we now have, but I doubt it. It may be that our general situation would be improved, but I do not see how that is possible.

With respect to such a procedure only one thing is certain, and that is that we would have a period of suspense, of doubt and of uncertainty that would work a more or less serious interruption to business.

We should not invoke such results until we know, or at least have reason to believe, that revision will do less harm than non-revision.

But pass all that by. Assuming that the least possible injuries would result, and that the greatest benefits we can reasonably hope for would follow, still I want some man who is clamoring for an immediate revision to tell me what evil is so great it can not be longer endured, what duties are to be changed, and what improvement in the situation is to follow. Let us have a bill of particulars. No man should say that he is in favor of such a disturbance of our industrial conditions as all concede would inevitably flow, in greater or less degree, from general revision, unless he has studied the subject sufficiently to have an intelligent opinion as to what should be done, and how it should be done. He should know, at least have an intelligent opinion, as to the particular duties he would change, and the extent to which he would change them.

What I want to know is, and I hope some Republican tariff revisionist in Ohio will tell me, whether he would change the duties, now levied for

the protection of our agricultural interests, on wheat, corn, rye, oats, barley, potatoes, butter, milk, eggs, horses, hogs, sheep and cattle, and if he would change these duties, or any of them, would he make them higher, or lower, and if lower, how much lower?

I have observed that most tariff revisionists want free coal and free hides and free wool.

How is it with the tariff revisionists of Ohio? Do they want these articles admitted free of duty, or if they do not want free hides, free wool and free coal, do they want to lower the duties on those articles, or any of them, and if so, to what extent?

And how is it about glass and pottery? These are highly protected industries. We have invested in them millions of dollars, and they employ thousands of wage workers. Do our tariff revisionists think the duties should be lower on glass, china and pottery? If so, how much lower?

We have great iron furnaces and iron mills, and great coal mining interests. Is there to be a change in the tariff duty affecting these industries? If so, how much of a change?

We have great and constantly increasing tobacco interests, and in the northwestern part of our State we are beginning to produce beet sugar. Is the duty on tobacco, or that on cigars, to be reduced, and if so, how much? Is the duty on sugar to be reduced, and if so, how much? Have the farmers of Ohio been consulted about wheat, corn, sheep, cattle, hogs, horses and other agricultural products to learn whether they are dissatisfied with present duties? Have the tobacco growers and the sugar growers been consulted? Have the mill owners, and the pottery men, and the glass men, and those whom they employ, been consulted, or are they to be consulted? Is that any longer necessary? Who can say they are dissatisfied with existing conditions, and if you make a change in these rates of duty, who is to be benefited?

Will the potters of East Liverpool and other points in Ohio have greater prosperity under the reduced duties revision would give them than they now have? Would the farmers have better markets or get better prices for what they have to sell? Would the tobacco growers of the Miami Valley or the sugar producers of Northwestern Ohio be stimulated or discouraged in the conduct of their industries? Would there be greater prosperity for our State, or for the whole country? Would our domestic commerce be increased in volume, or made more satisfactory in character? Would there be more freight to haul on our railroads, or a greater surplus to sell abroad in the markets of the world? Would our imports or exports be increased as a result of revision, and would the balance of trade in our favor be greater on that account? Would our revenues be more satisfactory? Would revision make an increased demand for labor? Would more mills be started, more mines be opened, and more industries developed, or more wage-workers employed?

No man who has intelligently studied the question can, in my opinion, answer any of these questions in the affirmative. If not, we would not thus secure a greater prosperity. On the contrary, revision would do for us now precisely what it has done for us always heretofore. We would again be taught, and quickly, that we can not increase the

importation of products made abroad with foreign labor without lessening the demand for the same products made at home with American labor. That means not only a shorter pay roll, but lower wages, and thus the trouble will begin. The old story will be repeated. The only net gain for the country will be a new stock of experience. We already have enough of that. If we heed what it teaches we will not be deceived by the loud demands we hear, even though they may represent great numbers. That is to be expected. There never was a time when every advocate of free trade and tariff for revenue only, and every theorist and idealist, to say nothing of sympathizing Republicans, did not want to revise our protective tariffs "downward." In the aggregate they are many. They always were and always will be. But what does that signify? There are always numerous champions of error. It is common and truthful to speak of "the hosts of sin." But noise and numbers are not argument, nor in this case even evidence of right.

Let the people speak, and then we can learn what they want. They will have a chance in 1908. If they want a revision of the tariff they can give their commands and their wish will be obeyed. By that time there may be cause for such action, but now there seems to be no other reason for disturbing the tariff except that it has brought us the most unexampled prosperity the world has ever known.

However, notwithstanding all that could be said and done, with such an endorsement as Mr. Taft was giving it, the sentiment rapidly grew until it had assumed such proportions that the convention of 1908 pledged the party to revision by a plank in the platform. The platform did not say anything about a revision downward, but throughout the campaign Mr. Taft so interpreted it, and, therefore, when he became President the whole country not only expected a reduction, but he more than anybody else had caused the people generally to believe a reduction was necessary, and that it should be substantial.

He convened Congress in special session to redeem this particular pledge. Until then he did not know much about the tariff except only in the most superficial way. He practically so stated in one of his speeches, but he soon learned that it was one thing to theorize and another to legislate; that while it was natural, and, therefore, an easy thing for Democrats, who were free traders anyhow, to revise a protective tariff downward, it was a very different thing for Republicans, who believed in such a policy as wise, patriotic and necessary to the prosperity of the country, to undo their own work.

Nevertheless, due to such men as Speaker Cannon, Mr. Payne and Senator Aldrich, the result was a fairly good law, but one that satisfied nobody. There was enough revision downward to displease protectionists, and not enough to satisfy the expectations that had been aroused. This was a bad start.

His so-called whitewashing of Secretary Ballinger, following soon afterward, gave strength to a trend of sentiment that was already turning against him.

His appointment of Chief Justice White, a Southern Democrat and an ex-Confederate, and an Associate Justice of the Supreme Court, in this last respect breaking all precedent, was a great disappointment to thousands of Republicans.

Personally I was fond of Mr. Justice White. Our relations were cordial. He was a great lawyer, an able jurist, and he has made an admirable Chief Justice. So far as I am personally concerned, the objections to him would not have appealed to me if other conditions had called for his appointment.

I happened to be in Washington a few days after the appointment was made. I called at the White House to pay my respects to the President. In the course of the conversation that followed he asked me how I liked the new Chief Justice. I answered that I was sorry he had asked me the question because I felt compelled to tell him in answer that I could not help wondering, when I read of his induction into office, how my old comrade of the Army of the Cumberland, Mr. Justice Harlan, must have felt when administering the oath to him. The President remarked, "Oh, Senator, the war is over!" to which I rejoined, "Yes, I know the war is over with a great many people, but I know, also, that with most of these the war never commenced." He replied by calling one of his secretaries and laughingly directing him to send me an invitation to attend the judicial dinner to be given by the President a few evenings later at the White House, in order that I might "have a chance to meet the members of the Supreme Court, and *especially the new Chief Justice.*"

I accepted and attended. I met the new Chief Justice and had with him a very agreeable conversation. I also met Mr.

Justice Harlan. In the course of my conversation with him I remarked that I had tried to imagine how he felt when swearing into office the new Chief Justice. "On this hint he spake," and told me that he felt deeply disappointed when the President, after he concluded to appoint an Associate Justice, passed him by and selected one so much his junior in service and, as he thought, less entitled by their past records to such a recognition at the hands of a Republican President; but he said, straightening himself up and evidently feeling every word he spoke, "I was careful to wear on that occasion my Loyal Legion button, and I took pains to so stand before him that he could not help but see it; and when I read him the oath I placed emphasis on the requirement that he should uphold the Constitution."

But Mr. Taft's attempt to establish reciprocity between Canada and the United States by identical legislation completely destroyed whatever chances of re-election he might until then have had; not so much because of hostility to the idea of reciprocity as because of the manner in which he sought to bring it about.

The Constitution provides that all revenue measures shall originate in the House of Representatives. They must be passed by that body and by the Senate before they can be properly considered at the White House. But in this case an "identical" measure was framed by some gentlemen, representing the two countries, who were shut up behind lock and key, so to speak, in rooms in the State Department, inaccessible to the industries to be affected, to the other officials of the Government and to everybody else. The bill they framed, if enacted into law, would affect our revenues to the extent of millions annually, and also affect in a vital way the policy of protection, a basic principle of Republicanism. And yet the people directly affected had no chance to be heard, and the House of Representatives, the only place where such a bill could constitutionally originate, had no official notice whatever that such a measure was even contemplated until it was completed and sent to them with a demand that it be passed without amendment; and later, when there was objection

on the part of Republicans to passing it, the announcement from the White House was made that if they did not pass it, the newly elected Congress, with a Democratic majority, would be convened and be asked to pass it; and this was finally done, in spite of all that protective tariff Republicans could say in criticism of the measure.

President Taft was so gratified with his "victory" that he publicly thanked the Democrats for passing the measure, and William R. Hearst in particular for the efficient services he had rendered the cause by advocating the same in his newspapers.

This was done in 1911. How could anybody expect that the party would be united and respond to his calls for help in 1912? If there had not been any break with the ex-President or any split in the party, it would have been difficult for him to have been either renominated or re-elected with such a record in these several respects.

But there were other reasons that contributed to the result. In a way that seemed intended to contrast him with his predecessor to the latter's disadvantage, loud claims were made that he would give the country a "safe and sane" administration, under which "business would have a chance." This made more acute than it might have been the feeling of disappointment and resentment that was aroused when the corporation tax law, with its inquisitorial provisions, was enacted and put into operation; and when it became evident from the offensive activities of his Attorney General that he was trying to break the record as a trust buster.

In view of the recent decision in the United States Steel Corporation case, the principal suit of the kind, but only one of many that he caused to be brought, it is safe to say that his ambition to break the record in trust busting has been gratified. But, unfortunately for his popularity, it was broken to his disadvantage.

But there were less important reasons, some of them almost unworthy to be mentioned in connection with those I have noted, why he lost much of his popularity with his party.

He has a big, broad, genial, agreeable face and manner. His "smile" is proverbial. It has made him many friends, but,

notwithstanding all that, the impression grew from things whispered about that he had a selfish and ungrateful disposition, and that he appeared to enjoy ignoring friends and forgetting obligations that the average man would remember.

Much of this was no doubt unjust, but there was enough truth in the stories to start them and to keep them going.

I had some experiences with him in this respect. One of them while he was Secretary of War.

It illustrates his peculiar ability to disappoint and make enemies where it would be easier and more natural to meet expectations and make friends.

MARKING GRAVES OF CONFEDERATES.

I have already told in a former chapter how, while I was Governor, I recommended in my Message to the General Assembly of Ohio that provision be made for the proper care of the graves of Confederate soldiers buried at Camp Chase, near Columbus, and on Johnson's Island, in Lake Erie, near Sandusky, and how, in pursuance of my recommendation, suitable provision therefor was made.

It was probably this fact that prompted the respective organizations of ex-Confederate soldiers to request me to introduce a bill in the 57th Congress making an appropriation to pay for suitably marking the graves of Confederate soldiers who had died in Northern prisons and hospitals during the Civil War and who had been buried at the places where they died. The bill was referred to the Committee on Military Affairs and there favorably considered. I made an extended report January 22, 1903, Number 2589, 57th Congress, Second Session, showing the number of graves to be marked, where located, probable cost, etc. The bill did not pass in that Congress, but I re-introduced it in the 58th Congress, where it again failed, and then re-introduced it in the 59th Congress, which finally passed it.

The bill provided for the appointment by the Secretary of War of a Commissioner to ascertain the location and look after the suitable marking of the graves and further provided for the payment of his expenses and such compensation as the

Secretary might allow. It was a long, hard fight, not so much because there was open opposition as because it was difficult to arouse the interest necessary to command a majority in the two Houses in favor of the measure.

The one man above all others who gave the subject constant and efficient attention was Dr. Samuel E. Lewis of Washington, who was an ex-Confederate soldier, a member of one of their Camps and the chosen representative of all the different Confederate organizations who were actively interested in the matter. Dr. Lewis was a very intelligent and very worthy man, who had no personal interest of any kind at stake, but was prompted entirely by a desire to serve his unfortunate comrades.

When the bill had become a law General Stephen D. Lee, then Commanding General of the United Confederate Veterans, and numerous other officials of the different organizations of the Confederate soldiers, wrote the Secretary of War, recommending the appointment of Dr. Lewis as Commissioner. At the same time they wrote me, thinking that, inasmuch as I was the author of the bill and had advocated it in three Congresses and had finally secured its passage, I might have some influence in determining who should be Commissioner. They requested me to recommend Dr. Lewis to the Secretary of War for appointment as they had done. Thereupon, to accommodate them, I wrote the Secretary as follows:

UNITED STATES SENATE.

HON. WILLIAM H. TAFT,
Secretary of War,
Washington, D. C.

March 7, 1906.

Dear Sir:—Herewith I enclose certain recommendations, which I have been asked to forward to you, of Doctor Samuel E. Lewis of this city, for appointment as Commissioner to carry out the provisions of the Act passed a few days ago providing for the marking and care of the graves of Confederate soldiers who died in prisons and hospitals during the Civil War, and who were buried near the places where they died.

These recommendations are by General Stephen D. Lee, Commanding General of the United Confederate Veterans, and Virginia Faulkner McSherry, President of the West Virginia Division of United Daughters of the Confederacy.

I also enclose, with the request that you may in the proper way present the same, a recommendation to the same effect from General Lee, addressed to the President.

In transmitting these recommendations it affords me pleasure to say that during the last three or four years while this legislation has been under consideration, Doctor Lewis has been active, in season and out, promoting, not, I am sure, with any selfish motive in view, but solely from a desire to have done for his deceased comrades, what the bill provides.

I have had quite a number of interviews with Doctor Lewis, and in this way have become well acquainted with him. He has impressed me most favorably as a man of intelligence, high character and sensitively honorable. I am sure if he should be appointed he would discharge the trust with great credit and with entire acceptability to the Government and all concerned.

I understand that he will be recommended not only by General Lee, but also by many others prominent as representatives of the surviving Confederate soldiers.

I should add in justice to Doctor Lewis that he has not, in any way, requested me to recommend him, and that I write as I do solely on my own motion and the suggestion of General Lee and others who have written me on the subject, and because I am anxious to have the work entrusted to some one who will undertake it intelligently and prosecute it honestly and successfully.

Very truly yours, etc.,

J. B. FORAKER.

The Secretary never answered the letter, but in time appointed somebody else, I do not now remember who, but I do know that Dr. Lewis was greatly mortified to have been thus denied the privilege of doing what would have been for him a labor of love and that all the leading officials of the ex-Confederate organizations were equally disappointed and chagrined. I do not know whether the appointment that was made finally proved acceptable to the ex-Confederates or not. I hope it did. But I always felt that almost anybody else would have been glad, under the circumstances, to appoint the man who was recommended by General Lee and all the other distinguished officials of the ex-Confederate organizations and also by myself, the author of the measure, without whose earnest efforts it never would have been a law; but it was Mr. Taft, and again he demonstrated that what generally influences other people had no weight with him, and did it just at the time when, as shown by his personal letter of April 22, already copied in these notes, he was sending me his testimony before the Canal Committee, in order that I might have a chance to read it and make myself familiar with the

facts about which he had testified so that I would be able to defend him if again assailed, as he had been by Senator Culberson about his testimony before the Philippine Committee.

PROMOTION OF COL. KINGSBURY.

Another experience of the kind mentioned was the following. It happened while he was President and had reference to the only request I made of him while he held that office, or ever at any time for that matter, for I had no personal interest in the marking of the Confederate graves.

I can best tell what my request was by quoting the following correspondence:

November 15, 1910.

The President:—During the last year of my service in the Civil War I was attached to the staff of Major General Henry W. Slocum. He commanded the Army of Georgia, the left wing of Sherman's Army, fourteenth and twentieth corps on the march from Atlanta to the sea and through the Carolinas. I became well acquainted with him and devotedly attached to him. He merited the distinction he won. He was, indeed, one of our safest and most efficient Army commanders.

His daughter, Florence Slocum, is the wife of Col. H. P. Kingsbury, of the Tenth Cavalry. I am not personally acquainted with Col. Kingsbury's record, but I know of it from others upon whose statements I feel I can rely in such a way as to warrant me in saying that you will find it highly creditable.

Some of his friends have requested me to join with them in recommending him to your favorable consideration in connection with the appointments soon to be made to the rank of Brigadier-General. I do not know what your embarrassments may be in connection with this duty, but I sincerely hope you will find it agreeable to give this officer as friendly consideration as your sense of duty will permit. I am told that he will have only three or four years to serve until he reaches the age of retirement. I hope, for the dear old General's sake, his daughter's husband may be found worthy in your sight for this distinguished honor.

Respectfully,

J. B. FORAKER.

HON. WILLIAM H. TAFT,
The White House,
Washington, D. C.

THE WHITE HOUSE.
WASHINGTON.

November 17, 1910.

My Dear Senator Foraker:—I have yours of November 15th, in reference to Colonel Kingsbury. I know Colonel Kingsbury and I think highly of him. There are so many candidates for promotion, however, that it is a little difficult to single one out until I have given attention

to the entire list. What you say in respect to Colonel Kingsbury, however, will lead me to give particular attention to his name when the Secretary of War submits the list to me.

With very sincere good wishes for your good health and happiness, believe me, my dear Senator,

Sincerely yours,

WM. H. TAFT.

HON. J. B. FORAKER,
Traction Building,
Cincinnati, Ohio.

Nothing was done and I wrote again:

March 11, 1912.

Dear Mr. President:—A year or two ago I recommended for appointment to be Brigadier-General, Colonel H. P. Kingsbury, of the Eighth United States Cavalry. You were unable to give him a promotion at that time. I understand there is to be another vacancy soon, and therefore venture to again call your attention to his claims. I understand he will have to retire in two or three years. Unless he gets the promotion soon he may fail altogether to get a General's rank. You will remember that I have a personal interest in his case because Mrs. Kingsbury is the daughter of General Henry W. Slocum, on whose staff I served during the latter part of the Civil War, in the marches through Georgia and the Carolinas. Of course the great services he rendered are not a ground for the promotion of his son-in-law, but if you find that the son-in-law has the good record that I understand he has, and is in every other way worthy and deserving, it would be a graceful recognition of the invaluable services of the old Commander to thus gratify the natural desire and ambition of his daughter.

Very truly yours, etc.,

J. B. FORAKER.

HONORABLE WILLIAM H. TAFT,
White House,
Washington, D. C.

THE WHITE HOUSE,
WASHINGTON.

March 15, 1912.

My Dear Senator Foraker:—I have your letter of the 11th instant, recommending Colonel H. P. Kingsbury for appointment as Brigadier-General, and note what you say in his behalf. I am glad to have your endorsement of Colonel Kingsbury, and shall give it very careful consideration when the subject of filling the next vacancy is taken up.

Sincerely yours,

WM. H. TAFT.

HON. J. B. FORAKER,
Traction Building,
Cincinnati, Ohio.

That was the last I ever heard of it.

When it is recalled by those who have read his letters, as published in these notes, and know from them how frequently

he had occasion to thank me for favors I had shown him—appointing him Judge of the Superior Court, and, I may add, recommending him to President Harrison, at his request, for Judge of the United States Supreme Court, recommending him to President McKinley for appointment to the position of Governor General of the Philippines, and, later, defending him on the floor of the Senate, when he was charged by Senator Culberson with evasion and misleading statements in connection with his testimony before the Philippine Committee, it will be thought, I am sure, that the request as shown by these letters, for the promotion of Colonel Kingsbury, the husband of General Slocum's daughter, the only request I ever made of him in my life, should have been honored, instead of ignored. I am not telling it for that reason, but because, when it is understood that this is only an example of many other similar cases of which I have heard, it will be better understood than it ever has been by the average reader why there were other factors than Colonel Roosevelt that figured in his defeat, and why a distinct feature of his campaign, both for renomination and re-election, was an absolute lack of enthusiasm for him personally.

Possibly President Hayes or President Harrison may have been somewhat like him, but President Grant, President McKinley and President Roosevelt were totally unlike him. They were like other men. They had red blood in their veins and warm and grateful hearts that were full of appreciation for the ordinary amenities and courtesies of life. Either of them would have taken great pleasure in showing his appreciation for so distinguished and heroic a soldier as General Slocum was, by gratifying the wish of his only child, when to do so involved nothing more than a deserved promotion for a gallant officer whose record and rank entitled him to such recognition, and whose promotion and retirement with a General's rank would not have interfered with the promotion of any other officer.

I do not mention this because it was of the slightest moment to me, excepting in a sentimental way, whether he granted my request or not, but because it illustrates a character of man

seldom met with—a man of splendid qualities of mind and splendid qualifications for the great office with which he was honored, but who, nevertheless, had traits that unfitted him for success in public life, even if he did get to be President—once.

BROOKLYN SLOCUM MONUMENT.

Speaking of General Slocum reminds me that when only recently I had occasion to be in Brooklyn, New York, I hunted up the equestrian monument erected in his honor in that city, which was his home during the latter years of his life. I was sorely disappointed. The sculptor had a gross misconception of the character of the man. I was on his staff long enough to see him under almost all the different conditions to which a Commander is likely to be subjected—in camp, on the march, in bivouac, in battle. He was always the same quiet, careful, undemonstrative, but alert and active man and soldier, with a temper high enough and quick enough to be positive and aggressive when occasion required, but there was nothing spectacular about him. I do not think, during all the time I was with him, he ever took his sword out of its scabbard except when he rode at the head of his Army in the Grand Review at Washington, at the close of the war. And yet this Brooklyn sculptor puts him astride a galloping charger and has him wildly brandishing a drawn sword, thus giving him a general appearance grotesquely inconsistent with his real character. I could not bear to look at him so presented to his countrymen. I turned away, wondering who could have been responsible for such a work.

Much better is his monument at Gettysburg. That represents the man and is in keeping with the dignity of the battle it commemorates. In addition to his name it bears the inscription of his advice to Meade given at the Council of War held with his Generals on the evening of the first day's battle: "Stay and fight it out." This was exactly like him. Few words, simple, concise, but full of earnest meaning and precisely right.

CHAPTER XLVIII.

ODDS AND ENDS.

THERE are a few matters that I have passed over chronologically without mention because not directly in the line of the narrative of events that I have been trying to give, of which I should take at least brief notice. One of these was

THE CONFIRMATION OF GENERAL LEONARD WOOD.

One of the last matters coming before the Senate (November, 1903) in the disposition of which Senator Hanna took an especial interest was an attempt to defeat the confirmation of General Leonard Wood, who had been nominated by the President for promotion to the rank of Major General.

General Wood had been Military Governor of Cuba at the time when some notorious postal frauds were committed. Among others charged with complicity therein was Major E. G. Rathbone, a citizen of Ohio appointed by President McKinley to a position in the Postal Service in that island.

He was one of Senator Hanna's close personal and political friends.

Major Rathbone claimed that he had been persecuted rather than prosecuted by General Wood, whom he charged with arbitrarily controlling the Courts and dictating their proceedings against him.

The charges were referred for investigation to the Committee on Military Affairs, of which I was a member.

Senator Hanna appeared before the committee, announced that he was interested on account of Major Rathbone, and in a statement made by him repeated with approval all the charges Major Rathbone had filed.

General Wood was on duty in the Philippines and no one appeared before the committee to represent him. My personal relations with him were very cordial, and I knew enough of the

facts involved in the controversy to know that, unless somebody looked after his interests, he might be the victim of gross injustice. I therefore took upon myself the duty, with the consent of the committee, of examining witnesses in his behalf and cross-examining those who appeared against him.

The investigation continued through some weeks. A great many witnesses testified; among them the Honorable Elihu Root, then Secretary of War, who assumed responsibility, as the directing authority, for most of the complaints made against General Wood, who had acted under his orders simply as Military Governor of the island, and thus completely exonerated him.

Senator Hanna showed great anxiety during the progress of the investigation, on which, until the holiday vacation, he was most of the time in attendance, and great disappointment on account of some of the testimony. Especially did he seem disappointed with the testimony of Secretary Root, who told how General Wood had been appointed a Brigadier General by President McKinley solely on his merits as a soldier, which were deemed by President McKinley sufficient to justify jumping him over several other officers, who were ahead of him in rank. He then pointed out that at the time when President Roosevelt appointed him to be Major General he was the senior Brigadier General in the Army, and by the appointment was not jumping over anybody.

He also told with great force and effect how President McKinley had selected General Wood to be the Governor of Cuba over Generals Brooks, Wilson and Ludlow, who were considered for the place, specifying in detail the objections to each of the Generals so considered and rejected.

At the conclusion of the investigation I reviewed the testimony that had been taken and in a special report (Executive No. 1, 58th Congress, Second Session) upheld the action of the committee, recommending confirmation which followed when the Senate reached the case on the executive calendar.

The testimony taken and the special reports, such as my own, make a volume of something like a thousand pages. It was a hard, laborious strain, such as the trial of an impor-

tant, bitterly contested law suit would be, for all who had any special responsibility in connection with the investigation.

General Wood acknowledged my work in his behalf as follows:

ZAMBOANGA, MINDANAO, March 22, 1904.

Dear Mr. Senator:—Your telegram of March 19th duly received, and your thoughtful kindness in sending it very much appreciated.

Mrs. Wood and others have written me of all you have done in this matter of the hearing before the Senate Committee as to my fitness for promotion, etc., and I have also received a copy of the splendid report you made.

I cannot tell you how much and how deeply I appreciate it all.

I did not write you during the investigation or to any member of the committee excepting Senator Alger, in reply to a question which he asked me as I did not deem it proper or desirable to have any correspondence with any of the committee until the matter was settled.

I could have made it rather interesting for a good many of the witnesses, but I do not know that I could have made them feel any smaller than you did before you got through with them.

I trust that the President sent you a copy of an old letter from Senator Teller to me congratulating me upon my appointment as Brigadier General, in which letter he took occasion to say that the brief delay in confirmation at that time was incident to the thorough discussion in the Senate of the policy to be adopted in such cases, and ended by saying that I had been confirmed without opposition, and that he extended his most sincere congratulations upon my well-deserved promotion.

In view of his position, in this instance, which was as I understand from his own statements, taken upon the question of policy, the letter would have been rather upsetting.

I hope sometime to be able to thank you in person; in the meantime I can only reiterate my sincere appreciation of your more than friendly attitude in this matter.

Very sincerely yours,

LEONARD WOOD.

HON. JOSEPH B. FORAKER,
United States Senator,
Washington, D. C.

Following immediately after Senator Hanna's strenuous campaign in Ohio for re-election, this hearing had a most prejudicial effect upon his physical condition, and no doubt did much to precipitate his last illness, which commenced even before the investigation was concluded.

On this account he was suffering chagrin and smarting with disappointment at the time when he was re-elected by the Ohio Legislature in January, 1904, and, in addition, he

had not yet forgotten the endorsement of President Roosevelt by the Ohio Convention and his discomfiture in connection therewith.

Mr. Croly, his biographer, speaking of this time, says:

There is evidence that had he lived he would at the next favorable opportunity have done his utmost to make Mr. Foraker a negligible Senator in the politics of Ohio.

He might have added that it was also at the same time currently reported that in some remarks he made in Columbus immediately after his re-election he expressed dire purposes with respect to President Roosevelt, or, to use his exact language "that lunatic in the White House."

I do not know whether there was any truth in these stories, but I do know there was no just cause for any such purposes with respect to either President Roosevelt or myself on account of anything either of us had done affecting him; certainly not in connection with the confirmation of General Wood.

I never paid any attention to such reports, for, if true, they were only harmless outbreaks illustrative of one of the weaknesses of a great man, which an unfortunate biographer has thrust to the front, without considering, perhaps, that he thereby places the Senator in a rather unenviable light.

I have often thought and now believe that had the Senator lived and regained his health, instead of belittling himself and his great position by such unworthy efforts as those suggested, he would have stood with me in the differences I had afterward with President Roosevelt—certainly he would have done so as to the Railroad Rate Bill and the defense of Representative Government as against the Initiative, Referendum and Recall and all their sister Socialistic ideas. If so, and with the efficient aid it would have been in his power to give, fewer Senators would have talked one way in the cloak room and then voted another way in the Senate; for he not only had the courage of his convictions, but he had a way of making other men have that same quality.

IMPEACHMENT OF JUDGE SWAYNE.

The Constitution of the United States provides that the Senate shall hear and determine all trials of United States officials against whom charges of impeachment may be presented by the House of Representatives, and that when the President is impeached the Chief Justice of the Supreme Court shall preside. It is provided by statute that he shall also preside when the Vice President is impeached. In all other impeachment trials the Senate chooses one of its own body to act as Presiding Officer. This Presiding Officer qualifies for the discharge of his duties by taking a prescribed oath.

He in turn administers this oath to all the Senators.

As thus qualified the Senate sits as a Court, hears the charges and defenses and the testimony that may be offered, passing on the question of its admissibility, if any such question be raised, the arguments for and against the accused and then pronounces judgment by vote; a two-thirds vote being necessary to convict.

It was my fortune to sit in one such Court of Impeachment. The procedure was dignified and impressive throughout, as well as unusual and interesting. In December, 1904, the House of Representatives notified the Senate that it would present articles of impeachment against Judge Charles Swayne, United States District Judge for the Northern District of Florida. Later, the House of Representatives, by its Managers, appeared at the bar of the Senate and formally impeached Judge Swayne and presented to the Senate the particular charges it would undertake to establish.

The House appeared by the following members who acted for that body: Messrs. Palmer, Powers of Massachusetts, Olmsted, Perkins, Clayton, DeArmond and Smith of Kentucky.

The Senate selected Senator Orville H. Platt of Connecticut, to act as Presiding Officer of the Court.

On account of the death of Vice President Hobart and the fact that his successor, Vice President Roosevelt, had not yet

been inaugurated, the Senate was presided over at that time by William P. Frye, the President *Pro Tempore*.

On proper request, Chief Justice Fuller of the Supreme Court, escorted by Senator Fairbanks and Senator Bacon, appeared in the Senate and administered the following oath to the President *Pro Tempore*:

You do solemnly swear that in all things appertaining to the trial of the impeachment of Charles Swayne, Judge of the District Court of the United States for the northern district of Florida, now pending, you will do impartial justice according to the Constitution and laws. So help you God.

The Chief Justice thereupon retired, and, following his retirement, the President *Pro Tempore* of the Senate administered the oath he had taken to Senator Platt, thus qualifying him to act as the Presiding Officer of the Court.

The first duty performed by him, after taking his seat as Presiding Officer, was to administer the same oath he had taken to the members of the Senate, who, as their names were called, appeared before the bar of the Senate and qualified in groups of ten.

Thereupon the Senate, with as little delay as public business would permit, proceeded with the trial.

There were twelve charges in all. The first three were that Judge Swayne had charged ten dollars per day for his expenses on three different occasions when holding court out of his district under a statute that allowed him to charge on that account "not exceeding ten dollars per day." His defense was that the statute had been construed by practically all the United States Judges as a fixed allowance of ten dollars per day to cover expenses incurred by a Judge when holding court in another district, and that the Department had ruled that it was not necessary to render itemized accounts for such expenses, but had approved the allowance of the lump sum mentioned.

It was my opinion that the construction given to the statute by the Judges and the Department was incorrect, but, feeling that inasmuch as practically all the Judges and

the Treasury officials had so construed the statute and that the practice had become practically universal, Judge Swayne should not be singled out and be punished alone.

On these three charges four Republicans—Bard, Kittredge, McCumber and Nelson voted guilty. All the other Republicans, including Allison, Crane, Cullom, Depew, Dolliver, Fairbanks, Foraker, Frye, Gallinger, Hale, Lodge, McComas, Penrose, Perkins, Platt of Connecticut, Proctor, Spooner and so on to the end voted not guilty.

The aggregate vote was, on charge one: Guilty, 33; not guilty, 49. On charge two: Guilty, 32; not guilty, 50. On charge three: Guilty, 32; not guilty, 50.

Charges four and five were that he had used, without making compensation therefor, a railroad car—a private car, I believe, being operated by a receiver whom he had appointed. These charges were so manifestly malicious, as well as trivial, that the vote stood: Guilty, 13, all Democrats; not guilty, 69.

Charges six and seven also seemed trivial and malicious. They were that he did not reside, as the statute required, in the district in which he was Judge. The testimony showed that his residence was at St. Augustine and that St. Augustine was within his district at the time of his appointment, but that later the boundaries of the district were changed so as to exclude it, and that, notwithstanding such change, he continued to reside there. Only one Republican, Mr. Bard of California, voted guilty on the sixth charge. The vote stood: Guilty, 31; not guilty, 51. The vote on the seventh was, however, much more favorable to the accused, being: Guilty, 19, all Democrats; not guilty, 63.

The remaining charges were that he had abused his judicial authority and power in adjudging certain attorneys who appeared before his Court guilty of contempt and severely punishing them.

The testimony with respect to these charges showed so much bitterness as to indicate that the attorneys punished were the prime movers in bringing about the impeachment and that the procedure was born of a spirit of revenge.

No question of public interest was connected with the prosecution and disposition of these contempt charges. For that reason it is unnecessary for present purposes to say more about them than that the Senate by a very large majority voted not guilty. I mention the other charges in detail and give the vote with respect to the same because it was a matter of common interest how the expense accounts of the Judges should be made up and where the Judge should reside.

Notwithstanding the failure of the impeachment, good resulted from it, for I have been told that, as one of the effects the general discussion of the subject, the Judges and the Treasury Department have changed the practice with respect to accounts and that now all such accounts are itemized.

Even more important good would result if someone impressed, as all who participated in that impeachment were, with the cumbersomeness of that kind of procedure, would successfully champion an amendment to the Constitution that would authorize Congress to provide for a less expensive and more expeditious remedy for calling Judges of the inferior Courts and ordinary officials to account and removing them from office than that to which we had to resort in that instance.

Speaking on this subject before the Constitutional Convention of Ohio, March 14, 1912, I made a similar suggestion. With proper changes and modifications what I then said expresses so well what I now have in mind that I quote from the language employed at that time as follows:

It is not within my province or privilege to formulate a proposal for your consideration, but I suggest that it might be made the duty of the Attorney-General to receive and examine charges against Judges and other public officials now subject to impeachment, and if he shall find them sufficient in law, and that there is probable guilt, to put them into proper legal form and report them to the Governor with a recommendation that impeachment proceedings be had; in which case it shall be the duty of the Governor to summon an Impeachment Court, consisting of such number of members as he shall determine, not less than three nor more than fifteen, to be selected by him from Judges on the bench and other citizens of the State, in such proportion as he may determine; which court shall be convened at a time and place to

be designated by him, and then and there proceed to hear and determine upon the law and the evidence, the charges preferred—the Attorney-General representing the State, and the impeached official defending in person or by attorney. If charges be preferred against the Governor or the Attorney-General, the Chief Justice of the Supreme Court might be authorized to act in his stead.

All the details of such a proceeding should be left to the Legislature.

I am only suggesting that it is an easy matter to provide a tribunal that can be invoked at any time, with but little cost, to hear, in an orderly way, that will protect the rights involved, any charges that may be brought upon which there should be a trial; and that through the Attorney-General and the Governor there would be an assurance that no such proceeding would be had on frivolous or trivial charges, or except upon lines that would protect the public and secure equity and justice to all concerned, with but slight expense and without annoying the entire electorate, concerning a matter for which ordinarily it has neither time nor disposition.

HAWAII AND THE DANISH ISLANDS.

I zealously supported the annexation of Hawaii, not from a spirit of “greed for more land,” as it was at the time charged by someone, but for the same reason that I supported the Treaty negotiated by Mr. Hay for the purchase from Denmark of the so-called Danish Islands.

Hawaii and the Danish Islands both belong within our sphere of influence and, therefore, for general reasons, should not be allowed to fall into the hands of any other great power. There was never any fear from Hawaii while controlled by the Hawaiians, as there never will be any fear from the Danish Islands so long as they are owned and controlled by Denmark, but if Hawaii should fall into the hands of Japan or the Danish Islands into the hands of Germany, great harm might some time come to us therefrom, especially in view of their proximity to the Panama Canal.

What I have in mind is well illustrated by what has happened in the present European war. Germany has overrun and taken possession of Belgium. She asserts a purpose according to the newspapers to make Belgium her own territory. If she does, she will at the same time absorb all Belgium's possessions. If Denmark should become involved in this war and Germany should overrun and possess herself of Denmark and make that a part of the German Empire, she

would at the same time acquire her colonial possessions, and this would give Germany title to the Danish Islands. She would thus come into possession of them without directly challenging the Monroe Doctrine, and I imagine she would undertake to retain them without regard to any protests we might see fit to make on that account.

It was from considerations of this character that a treaty with Denmark was negotiated by Mr. Hay in 1902 for the purchase of the Danish Islands for the sum of five millions of dollars. The Senate ratified the treaty, but Denmark failed to do so.

I find among my papers an interesting confidential note from Mr. Hay with respect to the acquisition of these islands, but its nature is such I do not feel at liberty to publish it.

THE ISLE OF PINES.

A controversy arose over the proper interpretation of the Treaty of Peace between Spain and the United States as to the Isle of Pines. There were some who contended that by the Treaty it passed to the United States.

Some quasi-official statements were made to that effect by some of the subordinate officials of the War Department. Believing that the title to the island had by that Treaty passed to the United States, a large number of American citizens went to that island, acquired lands and made their homes there.

Later, when the government of the Republic of Cuba was established, it claimed that the Isle of Pines was a part of Cuba that did not pass to us under the Treaty with Spain.

The controversy had become quite acute when, for the purpose of its settlement, it was provided in a Treaty between the United States and the Republic of Cuba that, in consideration of the naval and coaling stations and other rights and privileges that were by that Treaty granted to the United States, we should relinquish all right, title and claim to the Isle of Pines.

When this Treaty was sent to the Senate the Americans residing on the island made a vigorous protest against its ratification. Much official correspondence resulted. Everything was finally referred to the Committee on Foreign Relations to be considered in connection with the Treaty.

I was appointed a sub-committee to examine all correspondence and other papers and documents relating to the subject and make a report thereon to the full committee. This turned out to be a very laborious task. I recommended a recognition of the claims of Cuba.

The result was embodied in a report prepared and made by me (February 1, 1906) on behalf of the majority of the committee to the Senate. My report was printed as Senate Document 205, 59th Congress, First Session.

My discussion of the subject and the exhibits attached thereto made a document of something like two hundred pages of closely printed matter.

There was a minority report very carefully prepared by Senator Morgan of Alabama, which was signed by him and Senator W. A. Clark of Montana.

The Treaty was never formally ratified during my service in the Senate, but both Cuba and the United States acted with respect to the island as though it had been, with the result that everybody seems to be satisfied with the government given to the island by the Republic of Cuba and to acquiesce in the claim that the island belongs to the Republic of Cuba by virtue of our Treaty of Peace with Spain.

RECIPROCITY TREATIES.

All treaties are considered in the executive sessions of the Foreign Relations Committee and the Senate, and unless the ban of secrecy be removed by formal action of the Senate, no one is at liberty to publish, orally or otherwise, what occurs.

It is usual when final action has been taken to make public the results reached, but seldom is this done as to the debates and other proceedings leading thereto.

For this reason I do not feel at liberty to speak of many things done in executive session that it would be interesting to mention.

It is not a violation of any rule or practice, however, to say that Reciprocity Treaties were generally unpopular, chiefly because they affected the revenues, and it was considered unwise to do that without open hearings, where all interests affected could be represented, and because of the constitutional provision that requires all revenue measures to originate in the House of Representatives, which is not a part of the treaty making power.

Upon these grounds

THE RECIPROCITY TREATY WITH CUBA

(1902) was bitterly opposed. In a general way I sympathized with these objections, and in ordinary cases aided in defeating such measures.

I thought it better to do all the legislating, for treaties affecting the revenues were practically that, in open session, in concurrence with the House and after fair notice to all concerned to the end that we might have harmony in enforcement as well as all possible light on the subject considered; but in the case of Cuba I felt there were special obligations resting upon the United States growing out of our action in freeing her from Spain, and in a manner becoming responsible for her government and prosperity on account of which we should without delay give the people of that republic the advantages in our markets for their products that the Treaty provided for, and, therefore, took an active part in securing favorable action in the committee and ratification in the Senate.

I have been gratified to know that in consequence that island has enjoyed great prosperity and our country has not suffered appreciable injury, if any at all.

GENERAL ARBITRATION TREATIES.

I never had much faith in the efficacy of arbitration treaties to prevent international wars when there was any

real war spirit aroused, yet always supported them when I could consistently do so.

I believe I was able to support every such treaty with or without amendment that the Senate ratified while I was a member.

I do not remember that we had any serious controversy about any treaties of this character until in 1904, when the President sent to the Senate for ratification a number of such treaties that Mr. Hay had negotiated.

They were called General Arbitration Treaties, and were, separately of course, entered into with England, France, Germany, Austria, Italy, Spain and practically all the other leading nations.

They provided that all questions of a legal nature and all questions relating to the interpretation of treaties which the contracting powers might be unable to settle by diplomacy should be referred to the Permanent Court of Arbitration at the Hague, provided they did not concern a third party and did not affect the vital interests or the independence or the honor of either of the contracting powers.

Everybody in the committee favored the general proposition. But there was another article about which we were almost evenly divided. Our division was due to the fact that we interpreted differently the language employed in this additional article.

It recited that whenever a dispute arose that was subject to arbitration under the general provision therefor, there should be a "special agreement" entered into between the parties to the treaty defining clearly the matter in dispute, the powers of the arbitrators with respect to it, together with other matters relating to the procedure that should be had. I was one of a number of the committee who understood this to mean that the treaty did not require or authorize such "special agreement" to be submitted to the Senate, and that ratification of the treaty with this article included meant necessarily, therefore, the abdication by the Senate of a constitutional power it had no right to surrender.

Others took an opposite view. All either agreed or hoped that the framers of the treaties did not intend to thus exclude the Senate from the discharge of its constitutional duty.

After discussing and debating the question in the committee at a number of meetings, I called upon President Roosevelt to learn what meaning he attached to the provision. I quickly learned. He promptly and earnestly told me that the language not only did not require the "special agreement" to be approved by the Senate, but that the language had been carefully selected for that very purpose; that the negotiators of the treaty wanted to make it unnecessary to consult the Senate about any specific arbitration that might arise under the General Treaty.

I tried to argue the matter with him, but found him thoroughly in favor of the provision as it stood, and disposed to insist very strenuously that the Senate should ratify the treaty in the form in which it was negotiated.

After it was learned that such was the interpretation of the treaty by the President, some of us still opposed making a favorable report to the Senate. I think one or two who had been opposed when they thought it was simply a question of interpretation favored a favorable report after they learned that such was the President's desire.

There were enough of us, however, to prevent such action, and to keep the Treaty in the Committee where it was discussed further at a number of other meetings. Some of us were much troubled as to what the outcome would be when the whole matter came to a very sudden ending so far as we were concerned.

There appeared in the newspapers a sensational account of how some foreign war ships had appeared at San Domingo for the purpose of insisting that our fiscal agent in charge of their custom houses should apportion his receipts fairly among all foreign countries, whose nationals held claims against San Domingo, instead of holding them for the benefit of only American creditors.

I felt greatly mortified when I read the article until I reached the Committee room, to think I did not know that we had a fiscal agent in San Domingo. But I was relieved when the Committee having assembled I found no other member had ever heard of any such agent.

It developed upon investigation that some kind of an agreement called a protocol had been negotiated and put into operation by a naval officer and some other persons who had exceeded the powers given them, as the Secretary of State claimed, according to which our Government was to take charge of the custom houses and the fiscal affairs of that Republic and generally adjust and liquidate their debts, and that it was in consequence of this situation that the foreign war ships had appeared on the scene. The situation they had created illustrated so well the possible dangers of dealing in such a way with our foreign affairs that with but little comment, and without any debate whatever the Committee soon afterward unanimously agreed to strike out "special agreement" and insert "Treaty", a word that had a constitutional meaning that required the consent of the Senate and so amended reported all the Treaties to the Senate, which promptly ratified them by an almost unanimous vote.

The first time I ever met Mr. Andrew Carnegie was when, learning there was some trouble and not understanding exactly what it was, he came to my residence to see me as a Member of the Committee to urge that no technical matter should be allowed to stand in the way of the important step toward universal peace which he thought a ratification of the Treaties would mean.

When I explained to him, as far as I was at liberty to do so, the nature of our objection, he at once saw the force of it, and said he had no further fault to find, but that he would see the President and Mr. Hay and see if he could not induce them to acquiesce in the amendment we had made.

He saw them, but without avail. The President would not yield the point; and refused to submit the Treaties thus amended for ratification by the other contracting powers.

Later, after Mr. Root succeeded Mr. Hay as Secretary of State, practically the same Treaties were again negotiated except that in each it was provided that the "special agreement" should in every case be entered into by the President by and with the advice and consent of the Senate. In this form they were all promptly ratified.

The following letters shed some light on how this came about:

TWO EAST NINETY-FIRST STREET,
NEW YORK.

January 24th, 1907.

My Dear Senator:—Now that you have settled the Black Troop question may I venture to suggest that you take an early opportunity to see Sec'y Root upon that unfortunate Treaty disagreement. When I told him you thought some adjustment could be made he was pleased. Before that he told me that he had tried to find a way to this but had met with no encouragement. He added that you were "in position to do much;" just the man.

The failure of our country to ratify these treaties of peace was a sad blow.

You know, Senator, that I did not reproach the Senate, quite the reverse. I believe Sec'y Hay's illness created the obstacle. The President seemed satisfied, but I lunched with my friend Sec'y Hay one day and saw just what prevented the President from reversing Sec'y Hay; the truth is that Sec'y was beyond dealing with such affairs.

I am writing Sec'y Root suggesting he confer with you. With every good wish,

Sincerely yours,

ANDREW CARNEGIE.

HON. ANDREW CARNEGIE,

January 25, 1907.

No. 2 East 91st Street, New York.

My Dear Mr. Carnegie:—Referring to your letter of January 24th, I will at the earliest opportunity try to have an interview with Mr. Root. In these closing days of this short session it is very difficult to find time for a satisfactory consideration of such a subject, and it may be after the fourth of March before I can conveniently confer about it.

With kindest regards, I remain,

Very truly yours, etc.,

J. B. FORAKER.

After I left the Senate, and while Mr. Taft was President, in November, 1911, I had the following correspondence in regard to the then pending General Arbitration Treaties with England and France, according to which the obligation to submit all disputes to arbitration was made absolute.

In other words, the exceptions of cases where vital interests, National honor and third parties were involved were eliminated:

CITIZENS' NATIONAL COMMITTEE

IN SUPPORT OF THE RATIFICATION OF THE GENERAL ARBITRATION
TREATIES WITH GREAT BRITAIN AND FRANCE.

HON. JOSEPH B. FORAKER,
Cincinnati, Ohio.

NEW YORK, November, 1911.

Dear Sir:—As you are doubtless aware, a non-partisan National Citizens' Committee has been organized for the purpose of stimulating interest in the General Arbitration Treaties with France and Great Britain, which were submitted to the Senate last summer, and for disseminating accurate information concerning them.

These Treaties, if ratified, will mark a great forward step in the effort to bring about world-wide peace by making warfare more difficult, and by affording adequate machinery for the peaceful settlement of International Disputes.

It is highly desirable that the General Arbitration Treaties with Great Britain and France should be ratified at an early date after the assembling of Congress in December next.

We are planning to hold a series of impressive mass meetings throughout the country between November 12th, 1911, and January 15th, 1912. These meetings will be carefully organized, and great publicity will be given to them and to the speeches. The committee particularly desires to have you address some of these mass meetings, and I sincerely trust that you will be able to devote considerable time to this public service. The meetings will be held in important cities and promise to be interesting and significant events.

Will you not kindly give the matter your earnest consideration, and be good enough to let me know whether we can count upon your co-operation as a speaker?

Very sincerely yours,

JOSEPH H. CHOATE, *Chairman.*

HON. JOSEPH H. CHOATE,
Chairman, etc.,

November 20, 1911.

507 Fifth Avenue, New York, N. Y.

Dear Sir:—Absence from here has prevented an earlier answer to your recent letter inviting me to address some of the mass meetings the Citizens' National Committee intend to hold in support of the ratification of the general Arbitration Treaties with Great Britain and France.

I supported every arbitration treaty that came before the Senate while I was a member of that body, either with or without amendment, and I would be glad to support every other treaty or measure that may be calculated to advance the cause of peace; but I am unable to take any part in the advocacy of the ratification of these treaties without amendment.

To begin with, I do not think there is any occasion for enlarging the scope of the arbitration treaties that are now in force, by eliminating

the exceptions to the classes of controversies that may be arbitrated under existing treaties.

I had some experience as a member of the Foreign Relations Committee of the Senate with arbitration treaties, about which I am not at liberty to write, because the ban of secrecy has never been removed; on account of which experiences I deem it unwise to eliminate these exceptions, and also deem it unwise to provide that we shall intrust to a High Joint Commission the right to say that a given controversy is justiciable when the Senate is of the opinion that it is not.

If you will study our treaties with respect to the Panama Canal and the pledges we are under with respect to its neutralization, I think you will find a source of possible trouble based on "claims of right," etc., with respect to which trouble, if such trouble should arise, the American people would not and should not tolerate arbitration or any other suggestions that would look to the settlement of such a dispute by anybody else than ourselves.

This is not the only source of possible "claims," etc., involving similar and equally serious trouble. There are a number of others of the same general nature, but I do not, as I have already said, feel that I am at liberty to discuss them in a letter, or otherwise, especially not in view of the fact that nobody, for or against the treaties, has as yet mentioned any one of them.

For these reasons I cannot accept your invitation. I thank you, however, none the less cordially for such a kind remembrance as the invitation involves,

Very truly yours, etc.,

J. B. FORAKER.

SENATOR REED SMOOT.

Another burdensome work was in connection with the controversy over the right of the Honorable Reed Smoot to retain his seat as a Senator from Utah. I wrote the report of the Committee. In doing so I reviewed and analyzed all the testimony that had been taken as to the relations of Senator Smoot to the Mormon Church, and the entire history and character of that Church and the doctrines taught by it with special reference to the question of polygamy.

There was a Minority Report; but the report I wrote was accepted by the Committee and by the Senate, which, when the matter came on to be finally heard, voted that the Senator was entitled to his seat.

In my remarks in the Senate February 20, 1907, in support of my report I said of Mr. Smoot, who had been charged with being a polygamist and with almost every other crime:

The truth of the matter is, Mr. President, that Reed Smoot, by the sworn testimony given in this case, has proven a better character than any other Senator here has a right to claim.

He is so good a man that I sometimes almost doubt him. He seems to have no vices whatever. He does not drink or chew or smoke or swear, and he is not a polygamist; but on the contrary, Mr. President, from early youth, as the testimony read by the Senator from Indiana a few moments ago shows, he was distinguished in the Mormon Church for his opposition to plural marriages. In early youth, although the son of a plural wife, he raised his voice against the continuance of polygamous marriages in the Mormon Church, and from that day until this has stood the opponent of that idea.

I have never doubted the correctness or propriety of anything I said either in the report or in the speech I made in support of it.

The career of Senator Smoot has been distinguished for ability, fidelity and efficiency, and that, he may feel assured, is gratifying to those who, resisting public clamor, gave him a fair hearing and a favorable finding.

CHAPTER XLIX.

IN RETIREMENT.

SINCE I left the Senate I have not had much time for public addresses, but in addition to the Panama Canal speech already mentioned, I have delivered a number that attracted some attention. One of them was made during the gubernatorial campaign of 1910 at Marysville, Ohio, October 22nd. In it I took occasion to discuss Col. Roosevelt's then newly-put-forth political platform entitled

NEW NATIONALISM.

I quote as follows:

We have lately had a new declaration of political principles. They are politically baptized as the doctrine of a New Nationalism. They are set forth in the nature of a platform for a new party. Possibly they are intended for that use only in the event that the distinguished author be not nominated for the Presidency by either of the old parties.

However that may be, it is well to note that they violate our dual form of Government by arrogating unto the National Government the control of matters so purely local that they clearly belong to the jurisdiction of the States; they also authorize the courts to construe the Constitution, not as the precedents require, but in such manner as may be necessary to make it "keep abreast with the spirit of the times."

This proposition would be bad enough under any circumstances, but objection is accentuated when we remember that, according to this same authority, the members of the Supreme Court are afflicted with a "fossilized" mentality.

Aside from all other objections this new doctrine is as fatally at war with our institutions and as certainly destructive of them as any assumed or invoked in the name of the Southern Confederacy.

Such a preachment is not Nationalism, either new or old, but Imperialism pure and simple. It is, in spirit at least, as treasonable as secession itself.

The power it would give to the President of the United States would be far more autocratic and dangerous to the liberties of this people than are those of any monarchy in Europe.

These remarks had reference to a declaration of political principles announced by the Colonel a few days before my

speech was made in an address delivered by him at Osawatomie, Kansas, in connection with a John Brown celebration.

Ohio was at that time full of his fighting followers. My speech "rubbed their fur" the wrong way. They made their displeasure known in public interviews and in telegrams and letters of protest to the State Republican Committee. The Committee wired me, requesting that in my other speeches I was advertised to make during the campaign I should omit criticisms of other Republicans. I answered with the request that all my engagements be canceled. This raised such a storm of indignation among Republicans all over the State that the Committee promptly honored me with an invitation to re-enter the campaign without any restrictions whatever as to what I should say except my own judgment.

Among the gentlemen who put out indignant interviews was my old friend, Mr. James R. Garfield. He was greatly disturbed, so much so that he undertook to read me out of the Party. I answered his interview as follows:

Before Mr. Garfield reads anybody out of the Republican Party it might be well for him to make it a little plainer that he is himself in the Party. The newspapers report that Mr. Garfield was unable, after the nomination of Mr. Harding (*our candidate for Governor*) to tell whether he would support him for election or not until he could think the matter over and confer with his friends. That took some time.

The article setting forth his criticism of me stated that in his whole speech he failed to speak a word in behalf of President Taft or to even mention the name of Governor Harding or Congressman Thomas, in whose district he was speaking, or to say a word about the tariff, which is the great question of the campaign, except only to remark incidentally that it had been made by "the interests."

I might well challenge the right, if I thought it of any importance, of a man who makes a speech full of so many glaring omissions to read anybody out of the Republican Party. I do not care to speak further, at least not at this time, of what Mr. Garfield has seen fit to say, unless it would be to add that what I said at Marysville was not prompted by ill-will toward anybody, but, on the contrary, by a sense of duty,—the duty of speaking out against a new and strange doctrine that has been injected into the campaign and which, coupled with other emanations of a similar character, has bred dissatisfaction among Republicans.

In my opinion this new doctrine is quite as dangerous as I indicated, and if so, it is a duty not only to the party, but also to the whole country to promptly and emphatically reject it.

Two years passed and I was still in the Party and actively supporting the Republican cause, while Mr. Garfield was not



IN RETIREMENT.

only openly out but actively striving not only to divide but to overthrow and destroy the Republican Party. He said many unkind things about his former political associates.

I was called upon in that campaign to preside at a Taft Mass Meeting held in Music Hall, Cincinnati. Just to show how differently I talked about his new affiliations, I quote as follows:

We have had three National meetings in this hall during this week. The first was on Wednesday night, when the Bull Moosers met here. I am not going to say anything unkind about them. They are our fellow Republicans who are simply taking a kind of a joy ride. (Laughter and applause.) It won't last long. They will soon all be seeking to return. Like that great Liberal Republican Party movement that split the Republican Party in two and destroyed it in 1872, they will last for just one campaign (applause); by the end of the campaign there won't be much left to be proud of. (Applause.)

I don't intend to say anything unkind about them, because we expect them to be marching with us, shoulder to shoulder again, in the next campaign (applause); and I don't intend to say anything unkind about their great leader, and he is a great leader. (Applause.) My heart went out in sympathy to him and all his when a demented man made an assault upon his life. We are all rejoiced to know that he was able to stop a 38-calibre bullet and make a speech immediately afterward as though nothing had happened. No other man living could do it. (Applause.) We are all rejoiced to know that he is on the road to sure recovery. (Applause.) God speed his recovery so that by election day he may be healthy enough and sound enough for us, without any compunctions of conscience, to give him a good drubbing. (Laughter and applause.)

Two years later, 1914, Mr. Garfield had not yet ended his "joy ride." He was still outside "the breastworks" of the Republican Party, but not able to do it much harm. He was a candidate for Governor on the "Bull Moose" ticket, but he received only 60,904 votes out of a total of 1,129,203 votes cast; but that was not his fault. He took all he could get.

ADDRESS TO BUSINESS MEN'S CLUB.

February 28, 1912, I addressed the Business Men's Club of Cincinnati at their request on the subject, "What is the Matter with Business?"

In view of the discussion now going on about taking the tariff out of politics, and having the schedules and rates fixed

by a non-partisan Tariff Board or Commission, I quote from that speech, as applicable, the following closing paragraphs:

Much is said about taking the tariff out of politics. It may be possible to do that some time, but the day is not now at hand. There is a fundamental difficulty about it.

From the beginning of our Government we have had two schools of thought on this subject. One for free trade and the other for protection. Both believe they are right.

As long as this difference of opinion continues it will be impossible to have anything like a common opinion that either the one or the other should be the permanent and established policy of the Government.

A Tariff Board may be useful in getting data but it can never make the tariff a non-political and purely business question. Moreover, along the lines upon which it is expected to operate, I fear it will prove a disappointment. Briefly stated its purpose is to ascertain and report the cost of articles produced in this country and in foreign countries and by showing the difference in such cost here and abroad give a measure of the duty necessary to protect capital and labor in the United States. Anyone who stops to think for a moment need not be told that it would be with great difficulty that such a board could find with accuracy the cost of an article produced in this country, and that it would be entirely impossible for it to find with anything like even approximate accuracy the cost of an article produced in any foreign country, and if it would be possible to find the cost of the production of any article in any given place in this country, that would not be, as we all know, conclusive evidence that the cost would be the same in any other section.

And if such Board could find accurately the cost of producing a given article in some foreign country that would not be evidence of the cost of producing that same article in another country, where different wage schedules would obtain and where other conditions were different. What an article might cost in England would not be a measure of its cost in Germany, or France, or Italy, or any other country.

And so it will be found, after all expedients have been exhausted, that it will remain for Congress to exercise its judgment as to what the duties on imports shall be, and that in determining this duty it will be found that the only fact by which Congress can be safely guided will be, what comes through the Custom House. When floods of foreign goods are pouring in upon us and competing with us in our home markets, we know the tariff is too low. When nothing comes in we know it is too high. The safe medium must be determined by the exercise of a sound judgment and that safe medium will be a rate that will be high enough to make it safe for Americans to invest capital, employ labor and compete with one another. It has always been so and it always will be the same.

Practical business men understand this and therefore have no faith in sentimental theories that contemplate dealing with this vitally important

subject in new ways that are alleged to be harmless to business. It only adds to the alarm to hear of plans that contemplate a perpetual investigation with recommendations for changes at every session of Congress to be followed by unending piece-meal legislation. What the country needs as to the tariff is to do over again, what we have had to do periodically in the past, and will have to do periodically in the future, so long as human nature remains what it is; and that is to meet the question again, disagreeable as that may be, and settle it once more at the ballot box that our National policy shall be protection to American industries and American labor—not a low tariff; nor a high tariff; not a moderate protection; nor an extravagant protection; but enough protection to protect—and then, having thus determined, legislate accordingly—not by sections—not by keeping the subject continually open, but by a comprehensive statute that will cover both the beginning and the end of the whole matter; and then let Congress adjourn and go home, while the country turns away from visionary reforms and reformers, rejecting all appeals to allow ourselves to be led backward in the name of progress. . . .

ADDRESS TO OHIO CONSTITUTIONAL CONVENTION.

During the year 1912, March 14th, I was called upon to address the Constitutional Convention of Ohio. In this address I dealt with the general subject of organic law as contra-distinguished from statutory law and discussed the Initiative, Referendum and Recall. On this account the speech has more than a temporary application. These and similar topics will likely be the subject of discussion for some years to come. For this reason I print it in full in the Appendix.

HAMILTON SPEECH.

Another speech that attracted some attention was delivered before the Clearing House Association at Hamilton, Ohio, December 11, 1913. This speech was devoted to a discussion of the political questions then commanding attention, including a rather elaborate discussion of Socialism; prompted by the fact that at the election a few days before a Socialist Mayor had been elected in that city; and some criticisms upon the policy of President Wilson with respect to Mexico; which criticisms have been fully justified by subsequent events. I quote from this speech as follows:

Speaking of the Income Tax, I said:—The Congress should have power to impose such a tax, but that power should be exercised only in

time of war, or other emergency. The American people are patriotic enough to submit to any kind of supervision, or any kind of espionage, or any kind of restraint, or any sort of requirement as to reports with respect to their business that may be thought necessary, when there is an enemy knocking at the door; but nobody wants to be annoyed and vexed and harassed with such requirements in times of peace; especially not when the real purpose is not so much to raise revenue as to pry into private affairs, and, when such a form of taxation is justified only as a substitute for an income derived from tariff duties that have been dispensed with to the great satisfaction of the people of other countries, and the great dissatisfaction of at least a large portion of the people of this country.

However annoying, and however much of an interference with business all such legislation may be, we must patiently submit to it, and faithfully comply with it until we have an opportunity to repeal it. If it should be necessary to make some radical changes in the political control of the legislative departments of the State and the nation to accomplish such repeal and to stop assaults generally upon the business of the country, such changes will surely be made.

The business men of this country were never less in need of leading strings than they are today; they were never more honorable or upright in all their business transactions, and this is true not only of ordinary business, but of so-called big business as well. In every other country except this big business is encouraged. This is particularly true of Germany. It should be encouraged here, for it is largely through the agency of business of that character that we have been enabled to invade foreign markets, selling abroad as we did last year almost a billion and a half of manufactured products of which at least seventy per cent. was American labor. I hope and believe the pendulum of public sentiment is likely to swing soon, if it is not already doing so, in the opposite direction from that in which it has been swinging. I believe there is a growing recognition of the fact that war on business is war on ourselves, and that if we would have that universal prosperity to which we are justly entitled all business should have a fair chance, and that in this behalf all demagogues should be relegated to the rear and a sound, safe and helpful order of things should be once more inaugurated.

SOCIALISM.

In determining what should be done with respect to these attacks on business, it is our duty to look beyond that which appears on the surface, to the cause behind them, and when we do so we discover that they are in part the legitimate offspring of Socialism. This movement, starting in Germany, so far as its modern development is concerned, and, spreading all over the world, has for its avowed purpose the overthrow and destruction of what it terms capitalism.

There have been some modifications of the Marxian doctrines of Socialism, particularly here in America; but in the United States, as everywhere else, it is the avowed purpose of this political party, for such it has come to be, to substitute common or public ownership for private ownership, not only of all public utilities, but also of all prop-

erty employed in the production and distribution for consumption of all products and goods and supplies.

Generally, when men speak of Socialism, they think only of this idea and purpose and take no thought, because they have no knowledge of the other qualities and purposes of Socialism as understood in Europe and as advocated and defined by the leaders of Socialism in this country.

Considering only the attitude of Socialism with respect to the ownership of such property, about which position, as I have stated it, there is no controversy, there are many who see in it some humanitarian features that are attractive.

On that account thousands have voted that ticket at recent elections who never stopped to study and never had any conception of other doctrines that belong under the general classification of Socialism.

Socialism has appeared to grow on another account.

There has been of late much dissatisfaction at times, on one account and another, on the part of both Republicans and Democrats, with their respective parties.

Thousands and even tens of thousands of Democrats and Republicans, dissatisfied with their respective parties, have, on that account, voted the Socialist ticket, without stopping to think of the significance of Socialism, merely as a sort of protest against the action of their own parties in the respects as to which they were dissatisfied.

The time has come, however, when Socialism has grown to such proportions that it is the duty of every American citizen, interested in the preservation of his country and the prosperity of his people, to study and learn and know what Socialism really means.

If it meant nothing more than the common or public ownership of public utilities and the means of production and distribution, to which, by many, the meaning of Socialism is restricted, it would be enough to condemn it; for even in this restricted sense Socialism would, in large part, destroy individual initiative and individual enterprise and interfere with and greatly retard, if not stop altogether for a time at least, the development of our industries and the business capacities of our people.

But Socialism means vastly more and vastly worse than this common ownership of property. It is not only the avowed enemy of capitalism, seeking to destroy the relations of employer and employee, to abolish entirely the wage system and substitute co-operation therefor, but it is also the open and avowed enemy of the State, the church, the family and the basic principles and institutions of modern civilization.

The success of Socialism would be, in the language of Lord Rosebery, "The end of all—empire, religion, faith, freedom, people; Socialism is the death blow to all."

These words are none too strong to fittingly describe what the triumph of Socialism would mean.

In support of the truth of this statement let me quote the definitions and purposes of Socialism as given by some of its most distinguished leaders.

(Some of these quotations had been used by others in speaking on this subject; notably by the Rev. John Wesley Hill, in a debate he had with the Rev. Bouck White, but I verified all of them.)

Two or three months ago the newspapers announced the death of Ferd August Bebel, one of the leaders of Socialism in Germany and a member of the Reichstag, and the leader of his party in that body. He was during all the latter years of his life an acknowledged authority on everything pertaining to Socialism. One of his definitions of Socialism was, quoting his exact language:

"We aim in the domain of politics at Republicanism; in the domain of economics at Socialism; in the domain of what is today called religion at Atheism."

Franklin H. Wentworth, a leading Socialist of Massachusetts, says:

"All social laws are but the reflex and consequence of economic conditions. The present form of marriage can not escape this classification. Woman has been private property and the laws which bulwark conventional marriage bear ample testimony to prove this immoral fact."

Engel, a celebrated Socialist author, says, in a work called "The Origin of the Family:—"

"With the transformation of the means of production into collective property, the monogamous family ceases to be the economic unit of society; the private household changes to a social industry; the care and education of children becomes a public matter; society cares equally for all children, legal and illegal."

Mr. H. G. Wells, a Socialist authority, in a speech published in the *New York Independent* of November 6, 1906, said:

"Socialism involves the responsible citizenship of women, their independence of men, and all the personal freedom that follows; it intervenes between the children and the parents, claiming to support them, protect them and educate them for its ampler purpose. Socialism, in fact, is the state family. The old family of the private individual must vanish before it, just as the old water works of private enterprise and the old gas company. They are incompatible with it. Socialism assails the triumphant system of the family today, just as Christianity did in its earlier and more vital centuries. So far as English Socialism is concerned, and the thing is still more the case in America, I must confess that the assault has displayed quite an extraordinary instinct for taking cover, but it is a question of tactics rather than of essential antagonism."

Among the writings of Bebel, the German Socialist, was a work entitled "Woman and Socialism." This book was indorsed by the National Executive Committee of the Socialist Party of the United States as a standard work on Socialism. In it he deals with the question of sex relationship as follows:

"Under the proviso that he inflict injury upon none, the individual shall himself oversee the satisfaction of his own instincts. The satisfaction of the sexual instinct is as much a private con-

cern as the satisfaction of any other natural instinct. None is, therefore, accountable to others, and no unsolicited judge may interfere. How I shall eat, how I shall drink, how I shall sleep, how I shall clothe myself, is my private affair—exactly so my intercourse with a person of the opposite sex.”

Another standard authority on Socialism; in fact, it has been termed the Bible of Socialism, is known as the “Communist Manifesto.” In it occurs the following:

“On what foundation is the present family based? On capital; on private gain. In its completely developed form the family exists only among the bourgeois. This family will vanish as a matter of course, when its complement vanishes and both will vanish with the vanishing of capital.”

Ex-President Roosevelt declared that William D. Haywood was “an undesirable citizen.” Mr. Haywood is an acknowledged leader of the Socialist Party of the United States. He recently said in a public speech, as quoted in the newspapers, that there need not be any controversy over the proposition, “That Socialism is a peril to the church and the State.”

He further said that “Real Socialists will not attempt to deny that it is. We are opposed to the State and we certainly are opposed to what we have heard of the church and what we know of it. We were told that up in Lawrence, Mass., we marched under the banner that said, No God and No Master. It is true there was such a banner in the parade at Lawrence. I hope the time will come some day when every man of the working class will march under the banner that says No God and No Master.”

A leading and recognized organ of the Socialist party is *The Call*, a newspaper published in New York City. In its issue of February 10, 1912, it said in an article published in its columns giving an account of a refusal of the Socialists of the State of Washington to allow the Stars and Stripes to float by the side of the red flag over a hall in which they were holding a Socialist convention:

“To Hell with your flag! . . . When the red flag flies above our homes and our nation we shall honor it and love it, but until it does we refuse to recognize or respect any flag which is merely the symbol of and protects some national section of international capitalism. Down with the Stars and Stripes! Up with the red flag of humanity!”

In an article published in *The Call* June 11, 1912, the writer says:

“Let us acknowledge the truth frankly, and say that we care not a peanut for the ethical aspects of the question; let us admit that our sole concern is the acquisition of political power in order to enable ourselves to win full economic power. Let us admit if crime (as defined by capitalist law) and violence are calculated to further the movement, we are prepared and willing to use them. . . . Let us be honest.”

The Appeal to Reason, the official organ of Mr. Eugene Debs, two or three times candidate for the Presidency of the Socialist Party, in an

issue printed just before the trial of the McNamara brothers in an article discussing the approaching election, said:

"The fight at the polls this fall will center around the adoption of the initiative, referendum and recall amendments to the Constitution. Under the provisions of the recall amendment the Judges of the Supreme Court of California can be retired. These are men who will decide the fate of the kidnapped workers. Don't you see what it means, comrades, to have in the hands of an intelligent, militant working class the power to recall the present capitalist Judges and put on the bench our own men? Was there ever such an opportunity for effective work? No, not since Socialism first raised its crimson banner on the shores of Morgan's country. The election for Governor and State officers of California does not occur until 1914, but with the recall at our command we can put our men in office without waiting for a regular election."

The Fifth Congressional District of the State of Wisconsin, a part of Milwaukee, had the distinction, the first of its kind, of being represented in the last Congress by the late Victor L. Berger, a Socialist. He is quoted as saying, in the Socialist National Convention in 1908:

"I do not know how this question (of Socialism) is going to be solved. I have no doubt that in the last analysis we must shoot, and when it comes to shooting, Wisconsin will be there. We always make good."

Later, in *The Social-Democratic Herald* of July 21, 1912, he said:

"Therefore, I say, that each of the 500,000 Socialists and of the 2,000,000 working men who instinctively incline our way, should, besides doing much reading and still more thinking, also have a good rifle and the necessary rounds of ammunition in his home, and be prepared to back up his ballot with his bullet, if necessary."

Thousands of quotations of similar character might be made from leading Socialists and standard works on Socialism.

THE ROMAN CHURCH.

Although it is no wonder that it should do so, yet it should be cause of congratulation with all loyal and patriotic Americans that the Roman Catholic Church, recognizing the disloyalty to both the church and State and the exceeding wickedness of a movement that would overthrow and destroy civilization itself, should have solidly arrayed itself against it; it is, however, matter of wonderment that every other church of every denomination has not done the same. It can not be possible that the disloyal, unpatriotic, un-American purposes of this new political movement can be understood.

My purpose in calling attention to it is to give warning of its character and to appeal to all Americans who have at heart the good of their country to quit sidetracking their consciences by voting the Socialist ticket when not pleased with something that has happened or has been done by their own parties.

PARTY EMBLEMS, ETC.

In view of the immoral and political character and purposes of Socialism, as set forth in the quotations made, there is a particular reason why party names and party emblems should not be forbidden on tickets to be voted at our elections.

In the presence of such a menace every man should be required to fly his colors.

When one goes to the polls to vote he should know not only the name of the candidate for whom he votes, but his political affiliations and his political beliefs in so far as those affiliations may disclose them.

He should know, in short, whether a candidate named on the ballot is a Democrat or a Republican or a Socialist, and he must have this knowledge before he can vote intelligently.

It is not one voter in a thousand who could tell, without the aid of party names and emblems on the ticket, what is represented by each and every man on the ticket.

Voting should not only be free, in every sense of the word, so that every man who votes shall vote as he may prefer to vote; but it should be intelligent, so that every man may know for whom he is voting and for what he is voting.

I have always found my ticket under the eagle and the name Republican. I would be willing to run the risk, if there were any necessity for it, or sense in it, of voting the Democratic ticket as a result of not having the eagle or the name of my party printed on the ballot, but I would regret it exceedingly if there could be any danger arising from the omission of names and emblems of my voting a Socialist ticket.

Every other man who is a true and loyal law-abiding, patriotic American must, if he knows what Socialism means, feel the same way.

I hope, therefore, all laws that stand in the way of giving the fullest information to the voter on the ballot that is furnished him may be repealed to the end that in the exercise of his right of suffrage he may, at least, act intelligently, and not through ignorance of their affiliations and purposes cast his vote for candidates whom he would no more support, if fully informed, than he would invite the plague or the disasters of flood or famine.

I have already said that the men who framed our institutions were wise and far-seeing statesmen; they gave us a representative Government because no other seemed in the light of experience and reason to be suitable for a people of such great population and vast expanse of territory as we have in the United States.

What they provided in this respect as to the governments of the nation and the states we early adopted as a party organization and action.

CONVENTIONS.

To prohibit by law the nomination of candidates for office by a delegate convention is, in my judgment and according to my experience, a grave mistake.

It has become so fashionable to attack and tear down and destroy whatever is or has been that the mere suggestion, if it come in the name of reform, or some radical change with respect to Government, or with

respect to political organizations, is at once accepted as a new revelation of something better than what our fathers established.

Every man who has any experience in such matters knows that in a free popular Government it is true, as all recognized publicists of authority have said, that political parties are essential to the development and the discussion of new questions that may arise.

And every such person knows that it is the history of political parties in this country that they uniformly strive to formulate a declaration of principles which they can successfully present to the people as better calculated than the principles of their opponents to promote the public welfare; and that they strive industriously, sincerely, faithfully to nominate as their candidates to represent those principles the best men their party affords.

Now and then an unfortunate platform may be put forth, and an unfortunate nomination may be made, but always such mistakes are at the cost of the party responsible, and none of them ever would be made if the mistake involved could be foreseen.

In other words, under the delegate convention system the people are all represented just as they are in the Legislature and in Congress, and those representatives responsible to their constituencies for what they do have every incentive to serve their party faithfully, to the end that they may have opportunity to successfully and faithfully serve their country.

Under this system political platforms have always represented the political sentiments of those who framed them, and, with few exceptions, the candidates of all parties nominated to stand on those platforms have creditably represented the people behind them, and when elected to office have faithfully and creditably served the country and all the people who had any responsibility in giving them place and power.

It is not possible that under the primary system of making nominations first and then holding conventions afterward to frame a declaration of principles better results can be achieved than have been wrought in the years of the past.

This is especially true of Ohio. From the beginning of our history as a State our public affairs have been ably administered and the representation of our Commonwealth has been of the most acceptable character. And what is true of Ohio is true also as to platforms and nominations by national parties.

First, in order, should come a convention composed of delegates elected by the people, where platform declarations can be thoroughly considered and debated, and then carefully framed, so as to express party faith, party principles and party purposes, and then, after such a platform has been adopted, the candidates should be selected to represent and carry out the principles and pledges so promulgated.

My remarks are already too extended for the occasion. If they were not I should gladly make some comments on some other matters; some of which have been brought forward under the name of progressivism, but which are in the nature of retrogressiveism instead.

I refer in this connection to the Initiative and the Referendum and the Recall, all of which had been tried and proven failures more than a thousand years before our Constitution was framed.

THE MEXICAN QUESTION.

I would be glad, too, to say something about the Monroe Doctrine, and the interpretation that is being put upon it by the present Federal administration with respect to Mexico and San Domingo; and point out why I do not think there is any obligation resting upon us because of that doctrine, or otherwise, to assume responsibility for a *de facto* Government, or to supervise and regulate purely domestic questions of accession to office under a *de jure* Government.

With the morals and methods that may be employed by other peoples, we rightfully have no concern, except only as we do, and properly may wish that the same high standard of morals may obtain in every country that we try to maintain in this country.

In President Monroe's announcement of his doctrine it is stated as a part of that doctrine that with the politics of Europe, the troubles, the wars and accessions to office in that country we will have nothing whatever to do, except only to recognize the *de facto* Government that any country may have for the time being.

It can not be claimed in view of this language that it is properly any concern of ours how a *de facto* Government of any European country may have been established, or how the head of any *de jure* Government may have acceded to power. By the same token it is no concern of ours how a *de facto* Government may have been established in Mexico, San Domingo, or any other country of the Western Hemisphere, or how any head of any Government *de jure* of any country on this hemisphere may have acceded to power.

But if it were otherwise and moral considerations were to determine whether we should recognize a *de facto* Government, or a President who might accede to the head of a *de jure* Government it would be extremely difficult in most cases to set up a standard by which to measure intelligent action.

Take the case of Mexico, for instance. Huerta is at the head as Provisional President of the established Government. No matter whether it be the Government *de jure*, as it is forcibly claimed to be, or a mere *de facto* Government, it is the only national Government that has been recognized as such.

He has been recognized as Provisional President by the unanimous vote of both the Senate and the House of the Congress of the Republic of Mexico, and by all the army and by all the departments of the Government. He has been so recognized by Great Britain, France and Germany and many other nations. I know of no reason, at least I have heard of none, why he should not also be recognized by us, except only to use a common expression, there is "blood on his hands."

It may be there is blood on his hands. It would be hard to find a Mexican of distinction who does not have blood on his hands.

Some of them are bloody from head to foot; but suppose Huerta be driven out of office, as he probably will be, in consequence of our policy with respect to him, and what our Government is doing in hostility to him, then what? After the deluge, what comes next? Who then will be recognized? Will we still wait for some one without blood on his hands? Then surely we will not recognize any leader of the constitutionalists.

The record made by them is one of blood and waste and anarchy, and ruin, sufficient to fulfill completely the requirements of General Sherman's description of war.

The inhuman and brutal murder of captured prisoners has been such as to shock the whole world. The newspapers account for these brutalities by describing Villa and other Generals as bandit chieftains, who have been officially outlawed for years.

If Huerta drops out, then some one of these chieftains will probably accede to the Presidency.

If the fact that a man may have blood on his hands be a reason why he shall not be recognized then the same trouble will arise. In the meanwhile as now, our treaty will continue suspended, for if there be no Government we can recognize there is of necessity only anarchy; and anarchy like war suspends treaties of peace and amity for the simple reason that there is no Government in existence responsible for their enforcement, and, therefore, nobody against whom we can assert a claim of violation of a treaty and secure redress for the destruction of American life and American property.

If it were calculated to avoid war, otherwise inevitable, it might be justified, but it is not. On the contrary, it makes war, otherwise improbable almost a certainty, if not now later, for surely the seeds of strife have been sown.

The whole situation is most unfortunate. A bad feeling toward Americans already existing has been made worse and at best years will pass before relations that are cordial in fact will again be restored; but I have already said there is no time now for the proper discussion of a subject of such grave character, such serious importance, and such far-reaching consequences.

Some other time, when there is better opportunity, there is much more that might be said. For the present I leave it with the expression of regret that a President, who, although entertaining views with which I do not agree as to some economic policies, and views with which I do not agree with respect at least to this phase of our foreign policy, should make the mistake of putting our country in such an indefensible attitude as that which we have assumed in this matter.

I regret it because, and I should say with pleasure, I have long been an admirer of the ability, the culture, the refinement, the dignity and the high personal character of President Wilson. He has so deported himself since he assumed office as to show an unusual devotion to his duty as he sees it. I wish him every success possible with respect to all his policies, in so far as their success may be consistent with the prosperity of our country and the honor and the dignity of our great Government.

All I predicted in this speech about the so-called Mexican policy has practically come to pass. The refusal to recognize Huerta and our busy body intermeddling to drive him out and help some bloody red-handed bandit to succeed him, inaugurated a policy that has been unfortunate and indefensible from the beginning; but the milk and water announce-

ments about preserving peace at all hazards and not taking a foot of Mexican territory under any circumstances coupled with the humiliating fiasco at Vera Cruz, where nineteen American marines lost their lives in a quixotic effort to compel an individual to salute our flag at a time when everybody else was allowed to insult it at pleasure, have brought lawlessness, anarchy, and disregard of our rights so gross and offensive that intervention, war and bloodshed are probably unavoidable. The invitation to the South American republics to join with us in dealing with the Mexican trouble is also unfortunate. It is a precedent that will, if followed, in time, if not now, bring about entanglements that are likely to give rise to disagreeable complications and unpleasant results and consequences of a serious and far reaching character.

I do not mention

OTHER SPEECHES

because they are outside the purpose of this work, which properly stops with the end of my service in the Senate.

DEFEATED FOR NOMINATION FOR SENATOR.

For the same reason I shall give only a brief account of my campaign for the Republican nomination for United States Senator at the Ohio Primaries August 11, 1914.

I was reluctant to become a candidate, and consented only after it seemed as though I had been importuned to do so by almost all the prominent and leading Republicans of the State, who had made it appear that there was a well nigh universal desire on the part of the Republicans of Ohio generally to re-elect me.

Mr. George R. Scrugham wrote me a letter, that he called a "Memorandum," on the subject, January, 1914, while I was in New York, in which he made some practical suggestions about organizing and financing a movement in my favor. My attitude is shown by the following answer thereto:

January 15, 1914.

Dear Mr. Scrugham:—This morning's mail brought me your "memorandum." It is of such character that I think, to avoid misunderstandings, I should advise you at once,—not waiting until I return

next week—that if I determine to become a candidate for Senator, I do not intend to make any organization, or make any active effort, (except probably making a few speeches to express my views on public questions) beyond merely submitting my name at the primaries in such way as the law may require.

Unless the nomination can come to me in this way I do not want it; and would not accept it.

I have not decided to become a candidate for the reason that I do not like the idea of having to first engage in an election contest with friends as a preliminary to the general election contest with the common enemy. With our party already more or less divided, this first fight among ourselves seems to me particularly unfortunate for it will no doubt leave some sore spots.

But worse still is the requirement of the law now in force that the platform shall not be made until after the nominations. This seems to me to be in conflict with common sense. It is certainly contrary to the due order of things. Who can tell in advance what it will be? This is not a light matter, for there are many ideas in the minds of people today that I do not approve; and at least some of them might find a place in the declaration of principles. It is, therefore, not only conceivable, but even probable, that some planks of the platform might be such that I could not, even by silent acquiescence, appear to either believe in them or approve them. In such event the only alternative would be the embarrassing one for both the party and myself of withdrawal from the ticket.

At any rate until I have seen the statute to be enacted governing the nomination of senatorial candidates and their election, I cannot intelligently reach a conclusion as to whether I shall become a candidate.

As to the other matters I have mentioned my mind is clear and irrevocable.

With assurances of appreciation for the friendly interest and the general good-will you manifest, I sincerely thank you.

Hastily, but very truly, etc.,

GEORGE R. SCRUGHAM, ESQ.,
Cincinnati, Ohio.

J. B. FORAKER.

I was still in doubt as to what I should do when the *Cleveland Leader*, owned and controlled, as I understood, by Mr. Dan R. Hanna, son of Senator Hanna, published an editorial openly attacking me and speaking of my candidacy as “a peril to the Republican Party.” I thereupon at once issued the following announcement:

HON. MORRIS POSTHORN, CINCINNATI, OHIO, May 18, 1914.
President the Cincinnati Republican League,
Cincinnati, Ohio.

Dear Sir:—Some weeks since you sent me resolutions adopted by your organization requesting me to become a candidate for nomination at the approaching primaries for the office of United States Senator.

Since then I have received numerous resolutions and letters of similar character.

In addition, nomination petitions have been circulated for signatures in accordance with the requirements of the statute applicable, and I am informed that more signatures have been secured than are necessary.

It has been my purpose not to make any announcement until these petitions shall have been filed, but so many statements of one kind and another are appearing in the newspapers that I deem it better to say now that I shall at the proper time file a formal acceptance of the nomination thus tendered.

Having reached this conclusion, I write to announce it to you as the first organization to take such action and through you to announce it to all others concerned.

NO SPIRIT OF OPPOSITION.

I do not become a candidate in a spirit of opposition to anybody who has been mentioned in connection with the senatorial office or who may hereafter be so mentioned, but simply because I believe the Republicans of Ohio desire the privilege of expressing their preference as to myself, as well as others, and that in view of the requests and petitions I have mentioned it is my duty to give them an opportunity to do so. They can themselves determine better than anybody else whom they want for a candidate, and their decision will be more satisfactory, or, at least, should be to all concerned than the decision of any limited number of individuals who may take it upon themselves to decide the question for them.

My record is probably well enough known to make it unnecessary to declare my views with respect to current political issues. It is, therefore, more to conform to the custom that seems to have been established than to impart information that I take the liberty of stating that I am a firm believer in the policy of protection to American industries and American labor—not high protection nor low protection, but enough protection to make it safe to invest the capital necessary to revive our languishing industries and call back to employment on full time and at full wages the hundreds of thousands of idle and partly idle workmen, who, without fault on their part, are the suffering victims of the present low tariff law.

EMPLOYERS ALSO SUFFER.

Wage earners are not the only sufferers. Their employers are also unfortunate.

A general industrial depression prevails. It is made worse by hostile legislation heretofore enacted and now threatened by which business activity and enterprise are restricted and restrained far beyond what wise and necessary supervision and regulation require.

The evil effects of the course we have been pursuing are strikingly shown in the condition of our railroads, the prosperity of which is essential to the prosperity of almost everybody else.

The wholesale discontinuance of trains and the laying off of many thousands of employes, to which the strongest and heretofore most prosperous roads have been compelled to resort, are indisputable evi-

dences of undue hostility and a warning that a wiser, more just and more liberal policy should be pursued with respect to them, as well as to other kinds of business.

AS TO MEXICAN POLICY.

I share the well-nigh universal dissatisfaction that prevails with respect to the so-called Mexican policy of President Wilson, which, as heretofore repeatedly pointed out, has been calculated from the beginning to bring upon us the misfortunes of intervention and war. In view of the present aspects of the situation, I refrain from further comment except to say that when questions of difference between the United States and foreign nations reach the belligerent stage there can be only the American side. Controversy and criticism must then wait on peace.

No honorable man would knowingly sanction any kind of violation or disregard, even the slightest, of any treaty obligation. Neither should any honorable and patriotic American citizen think for one moment of surrendering any essential American right, simply to placate a dissatisfied foreign public opinion.

Believing that under the Hay-Pauncefote treaty we have a plain right to control the Panama Canal, I deem it a grave mistake on the part of President Wilson to propose and insist upon the surrender or compromise of that right. It is not a mere question of dollars and cents, but whether we are to control what may at any moment become a vital part of our national defense. There is no fort on our sea coast of which we could not better afford to share the control with other powers.

TREATY WITH COLOMBIA.

We are advised by the newspapers that a treaty has been recently negotiated by our Secretary of State with Colombia under which we are to apologize to the Colombian Government and pay \$25,000,000 in satisfaction of an alleged injury done by us through President Roosevelt in connection with the secession of Panama, and the acquisition of the canal zone.

I had personal knowledge at the time of their occurrence of all the facts then known, or now known, so far as I am aware, to which this treaty has reference, and know that President Roosevelt's conduct and action throughout that whole matter was highly honorable, and in every way above legitimate criticism. He did only what his duty required, and there is no just ground for complaint against him or our Government in any respect.

Colombia suffered no injury at our hands, except only such as she brought upon herself by her own unwise and indefensible conduct.

To pay her \$25,000,000, or any other sum, would be like submitting to blackmail; and to apologize to her would be an abject national humiliation, for which there is no excuse whatever.

SEES HOPE FOR SUCCESS.

For these and other reasons, both State and National, which I shall try to elaborate and enforce during the campaign, there is good cause

to believe that the Republicans of Ohio will be successful at the November election, thus emphasizing as the voters in other States have done in the recent elections the widespread dissent of the American people from the policies of the present national administration.

Such a victory now means that the election of 1916 will return the Republican Party to power and thus enable it to resume a career that is without a precedent in the annals of the world for an enlightened progressive statesmanship that has promptly grappled with and successfully solved every great problem that has arisen, whether relating to the development and prosperity of our country, or the improvement, elevation and happiness of the American people.

Very truly yours, etc.,

J. B. FORAKER.

I adhered to my purpose to do nothing more in my own behalf than make a few speeches on current subjects—just enough to cover those chiefly under consideration, and I did that much only because I thought I should express to the public the views I entertained with respect to them.

The reason I took this course was because I cared nothing for a return to the Senate except for the vindication involved, and the hope I had that I might, if so honored, be able to say or do something that would be helpful to the Party and the country.

But a "vindication" to be of any value in my own estimation should come I thought without anything being said or done on my part to bring it about. At least I felt that I would rather not have it than to get it by making any special effort.

The result of the election was 88,540 votes for W. G. Harding; 76,817 votes for myself. Thus Mr. Harding was chosen to be the candidate by a plurality of 11,723 votes. The Honorable Ralph D. Cole was also a candidate for the nomination and received 52,237 votes.

Naturally I felt some mortification and disappointment—mortification that I should have been wheedled into a candidacy I disliked only to be defeated, and largely by the active work of the very men who had especially solicited me to become a candidate—and disappointment because deprived of what I thought would afford me an opportunity to utilize

my experience in the public service in a helpful way at a critical time. But I lost no time regretting results.

The character of campaign made against me is indicated by the following editorial published in the Cincinnati *Times-Star*, April 11, 1914:

Senator Foraker occupies a peculiar position in the minds of the Republicans of his home city. The feeling toward him personally is kindly, even affectionate. The man's courage and intellectual size are generally recognized. Senator Foraker was a big figure in the National Senate in a day when the intellectual average of that body was considerably higher than it is today.

Republican sentiment in Cincinnati is friendly to Senator Foraker as a man. But, unless we are greatly mistaken, it does not favor his nomination for the Senate.

To nominate Foraker would be to surrender in large part the present opportunity. That act would be accepted in the popular mind as nailing the flag of standpatism to the Republican masthead. It would be to give the enemies of the party something to shoot at. The people of this State are plainly tiring of the political fads and fancies of recent years. The Republican Party can win as a party of moderate progress. It can not win, and it ought not to win, as a party of reaction.

We believe that Senator Foraker has been ill advised in announcing his candidacy for the Senate. If he remains out of politics from this time on, the bitterness of old controversies will be forgotten and the real bigness of the man will grow in the public mind as the years go by. If, however, Senator Foraker succeeds in making himself the Republican candidate for Senator in this year's campaign, there will inevitably come a revival of old charges and old acrimonies which, warranted or unwarranted, can only serve to embitter the closing years of a very notable political career. It is a self-evident fact that while Senator Foraker might be nominated at a primary, it is utterly beyond the limit of probability that he could be elected before all the people.

The Times-Star recognizes Senator Foraker's courage, his ability and his political stature. It is speaking as one of his friends, not as one of his opponents, in advising against his nomination for the Senatorship. (The italics are those of the editor.)

The most injurious suggestion and the one that I think did more harm than anything else was that while all could be said in my favor that was expressed in the editorial, yet it would be a mistake to nominate me, because I could not be elected.

The gentlemen who gave prominence to that idea were not prompted by fear that if nominated I would be defeated, but rather by fear that if nominated I would be elected. They did not want to see me politically rehabilitated because of apprehension that I might in such event interfere with other plans they had in mind.

At any rate, this character of opposition, which, under the leadership of the *Times-Star*, became general in opposition papers, and the attack of the Anti-Saloon League made in the way shown at page 135 (Vol. 1) were sufficient without additional cause to defeat me by the relatively small plurality mentioned.

I was much pleased that the result of the election in Hamilton County overwhelmingly refuted the statement of the *Times-Star* that, while "Republican sentiment in Cincinnati is friendly to Senator Foraker as a man, it does not favor his nomination for the Senate." The vote in Hamilton County was: Cole, 2,265; Harding, 5,774; Foraker, 13,715, or a plurality over my successful opponent of 7,941, or a majority of 5,676 over the combined vote of both my opponents. If I could only have had the support of the *Times-Star* my vote would no doubt have been sufficient to nominate!!

This expression of confidence and preference by the neighbors and friends of my home city and county helped me greatly to accept my defeat good naturedly.

I easily persuaded myself that it was better for me and the country to have the contest end as it did. I shall be more humble and have more time for meditation and reflection and to set my house in order for the "inevitable hour," while the State will be represented by a man in the prime of a vigorous manhood, and able, therefore, to make a record that will be a credit both to the Nation and our Commonwealth.

While thus accepting the result yet I do not recall this experience with any pleasure; not because of my defeat so much as for other reasons. There was the usual calumny of enemies and perfidy of pretended friends, disagreeable under any circumstances, but particularly when not expected and

from unlooked-for sources; but all that sort of thing, in greater or less degree, happens in every campaign.

THE PRIMARY SYSTEM.

What I refer to was something altogether new—the modern way of making nominations. It was my first personal experience with the direct primary system.

The Convention system was condemned because it was claimed that under it the bosses controlled. Admitting for the sake of argument that to a certain extent that was true, the evil had an antidote that reduced its bad effects to the minimum; since while the bosses controlled the Conventions, they were in turn controlled by public sentiment, which was mightier than any political boss or leader. This sentiment held even the most arbitrary and dictatorial and powerful bosses to a rigid responsibility and accountability at the elections, and afterward; and thus made them careful. On this account, as well as for other reasons, Conventions scrutinized candidates and studied platforms. Without an acceptable declaration of principles and capable and popular men to represent them as candidates, defeat followed for the Party and dethronement for the bosses.

There was not only this penalty for bad management, but there was for good management the reward of political victory and party triumph, without the hope of which no merely professional politician would remain in politics over night.

Moreover the Convention system was in harmony with the principles of Representative Government. It secured participation in the practical part of the work of a political organization of the most intelligent classes of a Party membership, and for many years gave satisfactory results. It would, doubtless, have continued to give satisfactory results until now, if somebody had not told us to the contrary—if a lot of professional good men calling themselves reformers had not risen to prominence and power and taken advantage of their opportunities to tell us how wicked and bad the system was.

Under it the Nation and every State in the Union thrived and prospered not only materially and intellectually but politically. We grew in population and each year brought to the public service a proportionate increase of great men. Under this system Webster and Clay, and Calhoun and Jackson, and Lincoln and Grant, and Cleveland and Wilson and McKinley and Taft, and even President Roosevelt were all chosen for the great offices they held and honored, and at a time when bosses were powerful and there were many of them in the land. In short, all the great Republicans and all the great Democrats of the past were in that way chosen for the public service and so acceptably represented the people that their names will be forever illustrious in American history.

Under this system we not only had great Presidents but we had in every Congress great men in the House of Representatives and great men in the Senate of the United States.

Under the new system equally great men may be honored with official positions, but no one will have the hardihood to claim that under it those chosen for the public service will outrank or in any way excel the great Leaders of the past. Down to the present moment at least no results have been achieved that warrant any such hope or expectation.

And this is true because our experience under the new system, short as it has been, is sufficient to demonstrate that no special good has been secured while the evils of the old system have not been dispensed with, but rather increased, and made more palpable and aggravating.

Under the old system nominations were made by conventions; but there was not necessarily anything bad about that.

In State Conventions all the different counties and cities were represented; in National Conventions all the States. The strongest men of the Party were there, not only to determine what should be done, but to consult with one another before taking action, to the end that the action taken might be the wisest and best under all the circumstances.

The so-called boss was a greatly magnified individual, who could not maintain himself in such a position as he was supposed to hold except by the common consent of those with

whom he was associated, and that consent he could not have longer than he was able to inspire them with confidence in his leadership. Moreover he came into his boss-ship naturally.

It is according to the nature of things that there should generally be one man in each community who outranks all others of his Party in capacity for political work, just as there is generally one man who outranks his fellows in capacity for any other kind of work in which men engage. But even such a man cannot dispense with conferences and co-operation; and no man with wisdom enough to long maintain himself as a political leader would ignore these manifest requisites to success if he could.

All this was plain but insufficient. We must have the Primary System and Conventions must go. Consequently there is no longer any meeting of delegates from the different wards of our municipalities for the nomination of Mayors and other municipal officials. There is no longer any meeting of delegates from the different counties at State Conventions to select candidates and promulgate platforms for State elections. We are pompously told that the people have taken these matters into their own hands and are settling all these questions in their own way. Ostensibly that is true, but not actually, and the Reformers are still unhappy. Already the law in force in 1914 has been materially amended in response to their demand.

Now anybody can become a candidate who sees fit to make a declaration to that effect and pay a fee prescribed by law, not in any event to exceed twenty-five dollars, and also file with his declaration a certificate as to his qualifications signed by five members of his Political party who are qualified Electors of the State.

It remains to be seen how this provision will work. It may be safely assumed that there will be no lack of candidates for nominations and that the Demagogue will have enlarged opportunities and will thrive accordingly.

Last year, when, according to the reformers who made it, we had as they claimed a perfect law, it was provided that any man could become a candidate for the office of Governor,

Senator, Judge or any other office, who would circulate a petition addressed to himself asking himself to become a candidate and secure to it enough signatures of qualified electors belonging to his own party to equal two per cent. of the total vote polled by his party at the last General election; for the Republican candidates something like five or six thousand; but no man, not even a candidate for a judicial position, could become a candidate unless he would thus circulate a petition and secure the requisite number of signatures thereto.

The spectacle presented by candidates for the offices of United States Senator, Governor, Chief Justice and Associate Justices of the Supreme Court, going in person or by agents up and down the highways and by-ways of the State with petition in hand verbally petitioning their fellow citizens to petition them in turn to become candidates for the offices to which they respectively aspired seemed so inappropriate and undignified that the whole State became disgusted and demanded that such a requirement be abolished, as it was by the first Legislature that convened. Thus that trouble has been removed.

But the real reason why the Primary Election system has not given satisfaction in Ohio is that it has failed to accomplish its first great purpose. It has not exterminated the Boss, but rather only made his work easier and for him less responsible. Formerly these bosses found it necessary to control conventions composed of from a hundred to a thousand delegates; most of them intelligent and capable men who had enough self-respect to resent any kind of improper domination.

The work of the boss was, therefore, generally a delicate and always a very serious matter for him.

Now, however, the practice is, or has been so far, under the new law as well as under that in force last year, that two or three persons who boss the organization will get together in the back room of the headquarters of the organization, or in some other invisible place where invisible Government resides and there agree upon a ticket, and then have the controlling committee, composed of only a few men, all of them

already under control, recommend to the voters that it be supported at the primaries. That is sufficient. Or, at least, has proven sufficient so far. For what the leading Committee recommends the organization accepts, or failing to accept goes to pieces to be succeeded by another that will take orders. The support of the organization generally means success. Of course, there may be now and then exceptions, but the exceptions only prove the rule. This is the rule and will continue to be the rule, because it is the natural and the necessary thing to do so long as political organizations exist, for, no matter what system may be in force, there must be leadership somewhere; and that is all "bossism" ever meant in nine cases out of ten.

To such an extent is this rule accepted that when the organization proceeding as above indicated has recommended a ticket the people acquiesce without dissent, and as a result only a small per cent. of the voters go to the polls for a primary election.*

In other words, from the starting point at which a ticket is recommended by the organization down to the end of the primaries the whole proceeding is a mere formality; and this is as much true of one party as of another.

Much is said in favor of a short ballot as a method of fixing responsibility and thus defeating the malign influences of invisible bosses and invisible Government, but manifestly in theory, as it has proven in practice wherever tried, it is easier for the invisible bosses to nominate one man—a Governor, than a dozen men—a whole state ticket. In spite, therefore,

* Both political parties combined polled only 18,604 votes at the primaries for the nomination of candidates for city offices in Cincinnati yesterday. Of this number the Republicans cast 13,501, and the Democrats 5,103. Returns were received very early at the Board of Elections and the entire vote was received and tabulated before 8:30 p. m. Except for several spirited fights for Councilmanic nominations the vote would have been even less. A lack of interest among citizens was evident on all sides, because neither general ticket had any opposition and the primary was practically a ratification of the selections of the party organizations.—*Enquirer*, August 10, 1915.

The Ohio Primaries are not held until May, 1916, for the selection of State and National candidates for next year, but already (November, 1915) the papers have announced that the "Leaders" have nominated full tickets, even to the delegates to the Conventions, and that all arrangements have been made to have them "formally ratified" at the primaries. Great are the mysteries of Reform! Especially in the killing off of the bosses.

of all that can be said in favor of a short ballot—and much can be said—especially along the line of fixing responsibility, the fact remains that except where the independent influences, turning bosses—good bosses, of course—can be sufficiently concentrated to nominate the heads of tickets the last estate will be worse than the first; the bad bosses who name the Governors will also name through him all heads of departments and other officials who are appointed.

The only important difference between the old and the new systems is therefore, as already stated, that the so-called bosses who control the organization and through its agents control nominations are now more invisible than ever, and for that reason less responsible than they were. They do nothing but recommend, and they do not do that openly; the people nominate, and if a mistake be made *the fault is theirs!*

In other words, the evils to be remedied are aided rather than destroyed by the methods employed to countervail them, and hence it is that with respect to these matters as with respect to most of the so-called reforms that have been during recent years instituted, they have not reformed, and never can, in the way proposed; because, in the first place, there is nothing in most cases to reform; and in the second place because political parties are necessary to the successful administration of a free, popular government, and there can not be any political party of worth and consequence without organization and co-operative effort; and so long as there are parties and party organization there will be leaders in the party and should be. Without them any party would prove incapable, inefficient and perish.*

* If Mr. Taft could have done as well when in office as he talks while out of office he never would have been defeated for re-election. In his Seattle speech of September 9, he is reported as saying:

"Parties are essential to popular Government. In no other way practically can the will of all the electorate be interpreted and embodied in affirmative action, legislative and executive.

"The convention system gave rise to abuses. Bosses and machines were able to control the convention, but even under the worst boss and the worst machine the convention was a body with a sense of some responsibility growing out of its desire to nominate a ticket which would win in the election; and, therefore, while it may have nominated many machine candidates whose selection did not make for the public interest, it frequently nominated men of strength and popularity and high character in order that the ticket might be a vote-getting one.

It has been a fortunate thing for the American people that we have had party divisions. Through the rivalries and struggles for supremacy of these political organizations the great issues we have settled have been developed; and it has not only been fortunate that we have had political organizations to thus develop these issues, but it has been also fortunate that party spirit has been correspondingly strong.

Without party spirit there would be no thorough discussion of public questions, and, therefore, no such general education of the masses of the people with respect to their own interests, and their own public affairs, as is necessary to intelligent and satisfactory Government.

Many people decry partisan feeling and strive to eliminate it, especially with respect to municipal affairs, the judiciary, and what are seemingly non-political questions.

It is possible to do some good in this way but so far the result has been disappointing. For some years, we have used in Ohio a non-partisan ballot at the election of our Judges. As a result a majority of the present Justices of our Supreme Court were elected by a vote of less than thirty per cent. of the qualified electors of the State; while at the election held last November (1914), more votes were cast in Cuyahoga County, which admits it has an intelligent electorate, for the Socialist candidate for Chief Justice of the Supreme Court, although he was, according to the newspapers, the keeper of a feed store in a small country town who had never read a law book in his life, than were cast in that County for either the Democratic or the Republican candi-

"Under the system of the general primary there is no such responsibility. Especially is this true in the selection of subordinate officers. Circumstances of no real or proper significance in the selection of qualified candidates affect the choice in such cases. Nor is it true that a general primary is any less subject to the control of a machine and the boss and a political organization than a convention. Primaries are usually attended by a minority of the party. In other words, the result is much affected by the number who can be aroused to come out to vote, and that depends upon organization. This places in the hands of the politicians who have an organization the means to control.

"The representative system was in Legislatures, and in conventions the system will work well if the people who ought to vote will turn out, and it will work for the reasons I have stated a great deal better than the initiative and referendum and the general primary. But we should realize under any system the politicians will control, if the people fail in their electoral duties."

date for that office, both of whom were able lawyers, and one of them, the Democratic candidate, Chief Justice Nichols, at that time holding the office and serving very acceptably.

These results were not due to objection to the candidates but to the fact that the Socialist "knew his man," as he always does, while the average voter, not knowing his man, and not finding anything on the ballot to tell him anything about him, even to what party he belonged, simply shot in the air, by voting a blank ballot as to the Judiciary. This teaches that instead of abolishing party names and emblems they should be required. Every candidate should be compelled to fly his colors, for every voter has a right to all the information he can get. No harm comes from such knowledge, while the absence of it means not only minority selections, but the smaller the minority the bigger the demagogue and the more he has to say about what "the people want."

Wise political leaders have recognized the value of party organization and partisan feeling, and have encouraged both to the extent of allowing both to have their legitimate and proper development.

Some disagreeable features have resulted, but the good has greatly overbalanced the bad.

POLITICAL OUTINGS.

Another new feature of a candidacy for a nomination under the primary system merits some attention.

It has now become the popular and, apparently, essential practice, especially in the large cities of the state to have what are called great political "Outings"; something after the order of a Kentucky Barbecue, where political partisans assemble for a holiday, for diversion, for beauty shows, for games, for athletic contests, and for sports generally; and particularly for making money on gate receipts and otherwise with which to lay foundations for campaign funds, and ostensibly for the purpose of "looking the candidates over," but really, by a sort of duress, compelling them to be present for exhibition purposes and as drawing cards.

I attended several meetings of this character, and had a variety of experiences that I shall long remember.

CLEVELAND OUTING.

At Cleveland the Republicans had their outing at Luna Park. It was a hot July day. When I went through the turnstile where they were taking admission fees, someone told us that over thirty-five thousand had preceded us. The Cleveland papers the morning following announced that more than fifty thousand were in attendance. The afternoon was spent by the candidates shaking hands and talking to those who honored them with their personal attention. This went on from two o'clock, when we arrived on the grounds, until eight o'clock, when the speaking commenced.

When this part of the programme was reached a megaphone announced that the next thing in order was a "presentation" of the candidates for Governor and United States Senator, and that the candidates for these offices should come forward as their names were called and take a seat on the platform.

The megaphone then bellowed forth the name three times in succession: "David Tod! David Tod! David Tod! candidate for Governor." David mildly responded and meekly made his way to the platform and took the seat assigned him. As he did so I thought of the shades of his grandfather—one of Ohio's great War Governors.

In like manner Frank B. Willis, Ralph D. Cole, Joseph Benson Foraker and Warren G. Harding were called, responded and were seated all in a row, like so many big pumpkins at a county fair; at least, I felt like one, and the others appeared as I felt.

As soon as we were all seated the megaphone thundered out the announcement that each candidate on the platform would be given ten minutes in which to present his claims for nomination.

I think all felt that it was an undignified, ridiculous, cheap and unworthy performance, but that we must go through with

it, no matter how humiliating it might be, chiefly because we did not know how to get out of it without doing something worse. At any rate go through with it we did.

COLUMBUS OUTING.

At Columbus they had a similar occasion except that it was for me at least only an afternoon performance and the candidates were not megaphoned to the platform as at Cleveland. It was Saturday and I was anxious to get away from there in time to get home for Sunday. I was consequently very happy to learn when I got through with my remarks that I had time enough to catch the late afternoon train for Cincinnati.

I excused myself and started toward an automobile that was in waiting to take me to the railway station. I was making haste rapidly but just as I was nearing the automobile I was rudely interrupted by two mock policemen, who, dressed up as police officials, with clubs in their hands, informed me that I was under arrest.

It was evident that it was a mock performance and that some kind of good natured indignity was intended. I explained that I was in haste to make the train and begged to be excused, but in an assumed rough manner and with rough tones I was told that "them kind of excuses would not go," and was pushed into a patrol wagon, and with a gong ringing furiously was driven rapidly through the crowds to another part of the park, where I was pulled out of the wagon, and in true police court fashion hustled into the presence of a mock police judge, and there arraigned on a charge of having been guilty of an altercation with my opponents calculated to cause a breach of the peace. Thinking I would expedite matters I plead guilty. Thereupon the Judge fined me \$2.50. I remarked that I would not only pay it willingly, but that to get away from there as soon as possible I would regard it as a great favor if they would be prompt in accepting my money. Thereupon the Judge announced that for using such language to the Court I was guilty of contempt and that he would raise my fine from \$2.50 to \$3.85. I paid this amount,

went back to the patrol, was rushed to my automobile, and reached the station just in time.

I do not mention these matters to complain of them, but only to illustrate how the great moral uplift that has submerged the whole country has reformed political methods. It is a pity that Salmon P. Chase, John Sherman, Allen G. Thurman, and George H. Pendleton should have missed all this; and what delightful reading an account of such an experience by the "Old Roman" would make!

If I had not been defeated I would tell a great many other things of like nature that came within my personal experience and under my personal observation in connection with that primary campaign.

If I were to tell all I know I fear it would be thought I am prejudiced against the primary system only because I was defeated.

The best defense I can make against that charge, if it should be made, is that in several speeches I made during that primary campaign I pointed out the undignified, ridiculous and irresponsible character of such performances. That is probably one reason I was defeated, but even if so I shall never regret it. The satisfaction of denouncing them was worth all it cost, no matter how much that may have been.

Such a way of nominating Governors, and Senators and Presidents and other important officials to carry on the public affairs of this great Nation and these great States and great municipalities is little short of a crime; and that crime is intensified by the fact that in such primaries not more than twenty-five per cent. of the electors participate; seldom that many, and most of those who do participate are from classes the least fit to determine such questions.

Without dwelling upon the matter further, I dismiss it with a sense of satisfaction that my public career was practically ended before such methods were known.

Anyone, except a blatant demagogue, equally familiar with the two systems, the old and the new, the Convention and the Primary, would unhesitatingly prefer the Convention even with the old time bosses on the front seats; although for doing

so he would probably incur the displeasure of the professional reformers who would tear down and destroy all things old and substitute therefor the impractical idealisms of so called progressiveism.

Such experiences as I have given enabled me to feel truly thankful when the end came that it was all over; even though I was defeated.

CHAPTER L.

CONCLUSION.

MANY people have an idea that Senators and Representatives in Congress have an easy time discharging the duties of their office. Perhaps some Senators and Representatives do have, but that is not true of those who are capable, and willing; for every such Senator or Representative there is more work to be done than any man should be required to do.

If a Senator be content to simply vote on general propositions, or to express the general trend of sentiment with respect to a question under discussion, he may be able to pick up enough in the cloak room or from the newspapers to enable him to stand muster; but if he should desire to participate in the debates in a helpful way he must thoroughly master his subject before undertaking to address such a body, so that he may express himself not only intelligently but accurately, and be able to answer any kind of interruptions; and to do this he will find it necessary to labor, as I did during the whole of my service in the Senate, almost without cessation from morning until night, and usually far into the night.

The reward one has for such labor is not in the distinction that may come to him; certainly not in the salary he receives; but in so far as there is any real reward at all it is in the satisfaction that whatever distinction he may acquire has been honestly and deservedly won, and that the record he leaves behind him is one for which he will never have to make apology.

It is a great satisfaction to me as I now look back over those rather tempestuous debates to find that I never undertook to discuss any subject that I had not made myself sufficiently familiar with to enable me to present it intelligently to my colleagues, and to answer without embarrassment any question they might see fit to propound.

SENATORIAL CORRESPONDENCE.

When to such labors as these is added a Senator's correspondence it becomes a wonder to the well informed how

there is left any time at all for the consideration and discussion of great national and international questions.

During my twelve years in the Senate I received on an average something like one hundred and fifty letters per day; probably fully fifty thousand letters annually, or six hundred thousand letters for the entire period. All these were read and answered, most of them by clerical help; but all of them were reported to me; and in every day's mail we found from twenty to thirty, or, perhaps, forty letters to which it was necessary I should myself dictate answers.

It is almost impossible to exaggerate the drudgery of this work, especially when, on account of absence or for some other reason, the mail might accumulate for a period of even a week. It seemed at such times well nigh impossible to ever again get caught up. I did all I could to minimize my correspondence but it seemed impossible to restrict it very much. There was always something pending on account of which my constituents, and many who were not constituents, saw fit to write me. It was not unusual to receive as many as three hundred letters in one day.

For a long time after I left the Senate my correspondence continued large and burdensome. At last it has been reduced to comfortable proportions, and in that fact I find cause for great thankfulness.

KIND EXPRESSIONS.

But I am more thankful still that notwithstanding the disagreeable circumstances attending my retirement I find my files literally burdened with cotemporaneous expressions of the esteem and good-will of men whose names were known all over the country.

As a sample I insert only one of hundreds, all equally cordial and complimentary. It is from Governor Black of New York, and reads as follows:

HON. JOSEPH B. FORAKER,
The Senate,
Washington, D. C.

NEW YORK, March 3, 1909.

My Dear Senator Foraker:—Tomorrow your services in the Senate come to an end for the time being. If you were to continue I should

say nothing about it. I had rather speak well of a good man going than of any other kind coming. That is why I intrude myself, a comparative stranger, to express both my approval of your career and my regret at its close. I regard your service as most able, brave and honorable. In my judgment it will rank among the most valuable which the country has received in very many years. I believe that view is entertained by thousands of your countrymen, most of whom will omit, for one reason or another, to express their opinion of you.

Contrary to my habit which I have seldom varied, I am indicating my feeling to you in the hope that it may be at least an infinitesimal comfort.

I hope and believe that your public service is only interrupted but not over.

I am, with great respect,

Sincerely yours,

FRANK S. BLACK.

Governor Black truthfully said in his letter that he was personally a "comparative stranger." We had met a few times, but practically he knew me only by my public record.

I quote now from another who knew me personally as well as publicly and had an intimate knowledge of me in both relations. I refer to Senator Shelby M. Cullom of Illinois. No one knew me better than he. He was an old Senator when I entered that Body. For twelve years I served with him as his colleague in the Senate and as his fellow member of the Senate Committee on Foreign Relations, of which, during most of that period, he was the Chairman.

I have known more brilliant and more scholarly men, but I have never known one better endowed with good, hard, sound, common sense; or one who was more absolutely honest in speech, deportment, and all the relations of life, both public and private, or one who was more thoroughly devoted and loyal to his duty as a public official.

He had a personal acquaintance with Abraham Lincoln, and was frequently likened to him because of his simplicity of life, speech, character and bearing. He was never robust or vigorous physically, but he was always at his post. His efficient and judicious and faithful manner commended him to his colleagues as a Senator who could be always relied upon as a just and wise counsellor. He won the esteem of his associates and always exercised great influence with them as to measures he had in charge.

His public career extended over fifty years. This half century embraced the Civil War, the Spanish American War, the Reconstruction period, the rehabilitation of our finances, the acquisition of our insular possessions and the establishment for them of civil government. With respect to all the great questions of his period he did his full measure of work, and did it always creditably, both to himself and to his country, but he will be longest honored and remembered as the author of the Interstate Commerce Law.

He is now gone to his reward having died January 29th, 1914.

One of the last things he did was to write some "Personal Recollections." They were published in 1912. I quote from them the following:

Of the many Senators with whom I have been associated in the Committee on Foreign Relations, and especially since I became its Chairman, there are two, both now retired to private life, in whom I had the greatest confidence and for whom I entertained great affection, as they both did for me—these Senators were the Honorable J. B. Foraker of Ohio, and the Honorable John C. Spooner of Wisconsin.

Senator Foraker preceded Senator Spooner as a member of this committee by some four years. I do not know how it first came about, but I became very intimate with Senator Foraker almost immediately after he entered the Senate, and at once grew to admire him exceedingly. He is a very brilliant man and has had a notable career. He enlisted in the Union Army as a private when sixteen years old, and retired at the close of the war a Captain. He then completed his education, and entered upon the practice of the law. He was elected Judge of the Superior Court at Cincinnati, and later became a candidate for Governor. The occupant of many civil positions of importance in his State, a prominent figure in National convention after National convention, nominating Senator Sherman for the Presidency in 1884 and 1888, and placing in nomination Mr. McKinley in 1896, Senator Foraker had established a record in public life, and had gathered a wealth of experience, sufficient to satisfy the ambitions of most men, before his great public career really commenced as a Member of the United States Senate in 1897. He also nominated McKinley in 1900.

Senator Foraker was one of the most independent men with whom I ever served in the Senate. He was a man of such ability and unquestioned courage that he did not hesitate to take any position which he himself deemed to be right, regardless of the view of others. It would inure to the advantage of the country if there was a more general disposition among public men to adhere to their own convictions, regardless of what current opinion might be. Senator Foraker always made up his mind on public questions and clung to his own opinion in the

face of all criticism. The most striking instance of this trait was when he, the only Republican Senator to do so, voted against the Hepburn Rate Bill, because he believed it to be unconstitutional. The fact that he stood alone in his opposition to that bill did not seem to bother him in the least.

On the recommendation of President Roosevelt, the Committee on Immigration of the Senate attempted to pass a very drastic Chinese Exclusion Law. I examined the bill and became convinced at once that it was absolutely contrary to and in violation of our treaties with China. I was very much surprised at the time that even Senator Lodge, one of the most conservative of Senators, supported the bill. I was deluged with telegrams from labor organizations, as I know Senator Foraker was, favoring the passage of the bill; but he, with Senator Platt of Connecticut, and some others in the Senate, whom I assisted as best I could, led the opposition to the bill reported by the Committee on Immigration and defeated it. Senator Foraker very well knew that his opposition to this bill would not strengthen him at home, but he disregarded that fact, and opposed it because he believed it was contrary to our treaty obligations.

A more recent case in which he showed his independence was his taking up the fight of the troops dismissed on account of the so-called Brownsville affair. This was very unselfish on the part of Senator Foraker. He had nothing to gain by espousing the cause of a few negroes, but much to lose by antagonizing the National Administration. He did not hesitate a moment, however. There is no question that President Roosevelt acted hastily in dismissing the entire company; but this was one occasion when President Roosevelt would not recede even though it became perfectly clear to almost everyone in Congress that he was wrong.

Senator Foraker always did make it a point to attend the meetings of the Committee on Foreign Relations, but for some reason or other he was never punctual and was seldom in attendance when the committee was called to order. But at the same time he was prepared on all important questions coming before the committee. He seemed to me to have given attention beforehand to subjects which he knew would come before a particular meeting, and his opinion on any treaty or bill before the committee was always sought by his colleagues and listened to with respect, and almost without exception his opinion prevailed.

I regretted exceedingly to see him retire from the Senate. From the time he entered that body he was consistently one of the principal defenders of Republican policies and Republican Administrations on the floor of the Senate.

Senator Spooner and Senator Foraker have both retired. It was thought at the time that their places could not be filled, and I, as one of the older Senators who remember them well, cannot believe that their places have been filled. Of all the Senators with whom I have served, Spooner and Foraker were most alike in their combative natures, in their willingness to take the responsibility to go to the front to lead the fight. Senators come and go, the personnel of the Senate changes, one Senator will be replaced by another, but the Senate itself will go on as long as the Republic endures.

When I saw what he had written about my tardiness in attendance upon the Committee I wrote him thanking him for what he had so kindly said about me, and then adding:

November 13, 1911.

Dear Senator Cullom:—

I hope you will allow me, without thinking that I am detracting from anything I have said, to add, that I think I should, in justice to myself, take some notice of your remark,—that although I always made it a point to attend the meetings of the Foreign Relations Committee, yet, for some reason or other, I was not punctual in that attendance, or to quote your exact language, “was seldom in attendance when the Committee was called to order.”

It is related of Charles Lamb that while he was an Excise Officer an inspector reported that he had a habit of getting to his office late in the morning. When the Department informed him of this charge he answered that it was true, but that he made up for it by leaving early in the afternoon.

My answer differs from his. I was a member of the Judiciary Committee, the Committee on Military Affairs, the Committee on Interstate Commerce, the Committee on Privileges and Elections, and Chairman of the Committee on Pacific Islands and Porto Rico, and for a while I was a member of a number of other Committees, including the Committee on the District of Columbia.

They were all active, hard-working Committees. Some one of which had a meeting every day in the week. I seldom left any one of these meetings without carrying away with me papers pertaining to a half dozen or more different matters, usually the knottiest and most difficult questions before the Committee, that had been referred to me, either as a Committee of one, or as a member of a sub-committee.

The result was I never had any time to lose in waiting for a Committee to assemble, and therefore made it a point to always get to a meeting, as nearly as I could, just about the time I thought the Committee would be ready to proceed with business.

I doubt if I ever detained your Committee, or any other, during the whole twelve years of my service, longer than a very few minutes, and those minutes were spent in work on other matters of the character above mentioned.

In addition to all this Committee work I made it a point, throughout my service in the Senate, to sufficiently familiarize myself with all important measures that came before the Senate to enable me to participate in any discussion that might arise. This required much additional labor, for as you know, while a Senator may sufficiently familiarize himself with a question to be able to vote on it satisfactorily without much labor, he cannot acquire the accurate knowledge of facts necessary to intelligent discussion without a great deal of painstaking investigation.

It is perhaps unnecessary for me to say all this, but somehow while writing you about your book, I feel it may be better to state it, not

in a defensive way, nor in an apologetic way, for I know there is no need for that, but only to put on paper the truth as a sort of response to your comment.

I hope to be in Washington about the first of December, and that I may then have the pleasure of meeting you once more.

I sincerely hope you have before you lengthened days and that they may be full of health and happiness.

You certainly should have, in the closing days of your life, freedom from sorrows such as you so feelingly mention in your closing chapter, coupled with a happy consoling realization that your service has been so extended, of such dignified character, and that your countrymen hold you, as they do, in such grateful appreciation.

With sentiments of high regard and warmest friendship, I remain,
Very truly yours, etc.,

HONORABLE S. M. CULLOM,
Springfield, Ill.

J. B. FORAKER.

He answered as follows:

UNITED STATES SENATE.
COMMITTEE ON FOREIGN RELATIONS.
WASHINGTON, D. C.

November 16, 1911.

My Dear Senator:—Your very interesting letter of the 13th has just been received and noted, and I am glad you make the response you do in reference to yourself.

Although I stated you were "seldom in attendance when the Committee was called to order," I also followed it up by the statement that you were generally on hand and ready to do whatever was necessary to be done, and that you were one of my supporters in taking care of questions on which we generally agreed. I did not refer to the matter of being a little late as criticism at all except in a most kindly way and not as an indication of any disposition on your part to neglect your duty. You were one of the hardest worked men in the whole Senate and I knew that all the time and did not mean to indicate any laziness or indifference on your part to your duty. I can see, however, that such a criticism might be construed to your disadvantage, and if it was to be written over again I would leave it out absolutely. I always relied upon Spooner and you as the two men of the Committee to take care of the different interests that we agreed ought to be taken care of, and with you two men at my back I always knew I was safe.

I was coaxed into writing the book and I finally promised to do it. A friend of mine, who now happens to live in London, insisted, when he was visiting me a year or two ago, that in justice to myself I ought to write a book giving my experiences and stories or whatever I might be able to put into it. Before I finished writing it I threatened several times to burn it up, but I did not do so and worked along a little hastily and finally closed it up and had it printed. I do not know

whether any one cares for it or not, but it is out of my way at any rate and I am glad to be rid of it. I expect I have made more people angry than I have pleased, but as I said at the beginning, I had come to that age in life that I did not care very much what the consequences might be.

Hoping you are in good health, I am,

Very sincerely yours,

HON. J. B. FORAKER,
Traction Building,
Cincinnati, Ohio.

S. M. CULLOM.

POLITICAL CHANGES.

But politically speaking I have more still to be thankful for. When I left the Senate I was "down and out," and my enemies were everywhere triumphant, and that was not any more agreeable to me than it would be to the average man. It required some courage to face the situation with equanimity. But how the mighty have fallen! The years have quickly passed. They have been quiet and peaceful, but very busy years for me.

I was not in my law office an hour until I was tendered employment of a most satisfactory and complimentary character. Except by choice I have not had an idle day since, but I have taken time to read the newspapers, to make a few speeches, and to *join my fellow citizens in welcoming back to private life one after another in rapid succession every man who took part in the work of retiring me.* Most of them are there to stay.

I won't mention names in this connection, for I, too, am so tender-hearted that "I can't strike a man when he is down;" but I will say that I have no distress on account of what has happened to any of these individuals. I have been able to bear their defeats and disappointments with Christian resignation and fortitude. *I have even found pleasure in the fact that I have been permitted to live long enough to see my worst enemies saying worse things about each other than either of them ever said about me.*

Fair weather with them soon turned to foul. Peace, harmony, and rejoicing were succeeded by differences, disputes,

controversies, detraction, defamation, slander, libel, anger, war and rumors of war, conspiracies of silence, and conspiracies of noise, open revolt, rebellion, political murder and suicide, together with every other political offense that selfish and clashing ambitions could suggest.

The natural consequence followed. Quickly they were all "down and out"; even the G. O. P. itself. What has befallen the Party it is difficult to contemplate with composure. It was unnecessary and willful. But the greatest trouble is that nobody any longer knows what Republicanism means. The Party was led away from basic principles by an effort to outdo Bryan by adopting and carrying out in the name of reform and a moral uplift a lot of his wild vagaries.

The net result has been to give him and his Socialistic isms a transient respectability while we have been demoralized, weakened and unhorsed. It may be found harder to get in than it was to get out. At any rate the man to lead us back is not yet (Aug., 1915) in sight; or at least not generally recognized. He will doubtless be found in due time. It may be very suddenly. Great men and successful leaders in American politics are often made quickly and unexpectedly. Garfield died in September, 1881, without in all probability having ever heard mentioned the name of his successor three years later in the Presidential office; and that successor was not of the party in power, which has first and best chance to take a popular position with respect to new questions and to deal successfully and popularly with old problems. Neither can it be said that the sudden rise to prominence of Grover Cleveland was due to any personal brilliancy or achievements, but rather to the disasters that overtook the Republicans of New York, which proved in their ultimate results fortuitous circumstances for the Mayor of Buffalo that enabled him to mount to the Governorship with such an unprecedented majority that it at once attracted attention and secured for him the prominence and popularity that carried him into the White House.

Our next candidate may thus suddenly break into view. However that may be, while we cannot now speak his name, yet it may be safely predicted, without undertaking to frame

a platform in advance, that he will believe in the preservation of the Constitution of the United States and the form of Representative Government it provides; not that our Constitution is to stand untouched forever, but that it shall be changed only in the way provided in that instrument for its amendment; that he will be opposed to all schemes and devices calculated and intended to secure minority rule by Socialistic associations that aim to fool, delude and bamboozle the credulous voter with non-partisan ballots, impracticable reforms and constant discourse about the wickedness of politics, while they themselves make politics in its worst forms their chief occupation; assiduously and constantly devoting themselves thereto by day and by night, especially by night; and chiefly behind closed doors, and by the use of all kinds of un-American practices; that he will believe in a real, genuine, protective tariff policy that will protect American industries and American labor; that he will earnestly favor a Merchant Marine and the doing of something practical and substantial in that behalf; that he will favor a restoration of our right to prefer our own ships in the use of our own canal; that he will be opposed to a sentimental "peace at any price" policy, and have common sense enough to know, without the help of a diagram, how visionary and impracticable is the new fangled proposition to organize and maintain an "International Peace Society" with an "International Army," through the use of which we will have "peace even if we have to fight for it"; that he will not hesitate to assert that the United States is the dominant power on the North American continent at least; and that as such while it should treat all other powers kindly and justly yet it should avoid entangling alliances with the Republics of Central and South America as carefully and as conscientiously as, following the advice of Washington, it has avoided such alliances with the powers of Europe, and other continents; and that in this behalf he will realize that the United States, asserting the Monroe Doctrine, and thus debarring other powers from protecting their nationals and their property in Mexico, becomes responsible for law, order and stable Government in that Republic, and that it cannot escape

that responsibility, and that it is not desirable to do so, if it could, by calling upon our sister Republics of the Western Hemisphere to join with us in doing what we ourselves are abundantly able to do and primarily obligated to do; that he will intelligently realize that while we do not want war with anybody or covet the territory of any other country, yet this home-policing is of itself a great work on account of which alone, saying nothing of our National defense, we should provide and maintain an Army and Navy at least approximately commensurate with our duties and our necessities; and that he will be wise enough to know that the penalties of war are hostages of peace; and that it is but to invite insult, and encourage lawlessness and anarchy in Mexico to proclaim in advance of everything that is done that it does not mean war in any event and that even if driven to war there shall not be any acquisition of territory for indemnity, or on any other account, under any circumstances whatever, no matter what our injuries or our grievances—a policy that has naturally excited contempt for our name and our flag, and led to the murder with impunity of hundreds of American men and the outrage of hundreds of American women, all of whom were entitled to the protection of our Government, but appealed for it in vain chiefly because of the unwillingness of those in authority to extend such protection, since that might bring bloodshed and look like war; that he will have brains enough and courage enough and patriotism enough to proclaim and enforce protection for American citizens from outrage, wherever they may be,—at home or abroad; and to compel respect for our flag wherever it may lawfully float, even though to do so might cause that flag and the civilization it represents to extend over enough foreign territory to indemnify us for the sacrifice, trouble and cost of establishing and maintaining the rights of our citizens, and respect and esteem for our Government and the justice which it at all times seeks to administer; and, speaking of affairs purely domestic, that he will discontinue the policy under which the Government has been given a so-called “New Freedom” to stick its nose into everybody’s business, and favor the sub-

stitution therefor of policies that will proceed upon the theory that the business men of America are not a lot of crooks to be watched, restricted and hampered, but honest, well meaning citizens who are entitled to confidence and a fair chance; that he will rejoice in business success, and not seek to harass, suppress and defeat honest efforts in that behalf by tormenting with all kinds of inspections, supervisions and investigations those who are struggling for such achievements; that he will, in short, if elected, protect and encourage the investment of capital, the employment of labor, the development of our resources, the extension of our commerce, and the upbuilding of prosperity for the whole country and all classes of our population.

To the extent he may lack in any of these respects he will fail to have the hearty support of the Republican Party, and thereby increase the chances of a continuance of Democracy in power.

Whatever may be done and whatever the result may be is immaterial to me personally. My battles have all been fought; but it would be the same if it were otherwise.

Toward those with whom I was associated in public life and those who have followed them, whether friends or enemies, I have no ill feeling of any kind.

If anything be found in these pages that may appear to indicate the contrary, it is not so intended.

I have aimed to tell only a plain, unvarnished story, give impartial judgment and make unbiased predictions.

It is not necessary I should have any ill will toward anybody. "Vengeance is mine; I will repay, saith the Lord." He has been repaying. He is everlasting, and will continue to repay as truth and justice may require.

But I am not thus complacent because depending upon Him to punish enemies and redress wrongs, but because of the belief that so far as I am personally concerned, time has abundantly vindicated all for which I was retired, and that in His own good time all who care to know and whose good opinion is of any value will so understand. With this I am content as any man should be.

But aside from that, as I now look back over my twelve years of service in the Senate, I do not find an important vote or speech that I would recall if I had the power to do so. In that fact there is great satisfaction and gratification. There were some votes and some speeches that were not very politic, looking to my own political popularity. It would be strange if there were not; but there was not one that was not in the public interest according to my best judgment, both then and now.

August 12, 1915.

THE END.

APPENDIX

ADDRESS OF EX-GOV. FORAKER.

THE ANDREWS RAIDERS — THE UNVEILING OF
OHIO'S MONUMENT IN THEIR HONOR IN THE
NATIONAL CEMETERY AT CHATTANOOGA, TENN.,
MAY 30, 1891.

CHATTANOOGA, TENN., May 30, 1891.

Ohio's tribute to the Andrews Raiders provided for by the Sixty-eighth General Assembly, was unveiled in the National Cemetery at this place today. The surviving Raiders, one widow and the sisters and sons of the men who were executed having been invited to be guests of Lookout Post No. 2, G. A. R., and Mission Ridge Post No. 45, G. A. R., are nearly all here. Ex-Governor Foraker of Ohio, delivered the principal address.

Regular memorial service was conducted at the rostrum by the local G. A. R. At 2:30 P. M. the exercise of dedicating the monument began. Past Department Commander Muller called the assemblage to order. Reverend T. C. Warner, Past Chaplain in Chief, offered the prayer. Judge Thaddeus A. Minshall, President of the Ohio Andrews Raiders Monument Commission, was presented by Department Commander A. J. Gahagan, Chairman of the local Andrews Monument Committee. Judge Minshall spoke briefly, after which ex-Governor Foraker was presented by Halbert Blase, Department Assistant Adjutant General of the G. A. R.

GOVERNOR FORAKER'S ADDRESS.

HIS ELOQUENT TRIBUTE TO THE OHIOANS WHO MET THE
FATE OF SOLDIERS.

Mr. President, Ladies and Gentlemen:—On the 20th day of March, 1889, the General Assembly of Ohio, by law duly enacted, appropriated five thousand dollars to erect "in the

National Cemetery at Chattanooga, Tenn., a monument or memorial of some suitable design at the group of graves, in which lie the bodies of eight of the Andrews Raiders, so-called, executed at Atlanta, Ga., June, 1862, to-wit:

“James J. Andrews, citizen, late of Flemingsburg, Ky.

“William Campbell, citizen, late of Salineville, Columbiana County, Ohio.

“George D. Wilson, Company B, Second Ohio Infantry, enlisted at Franklin, Miami County, Ohio.

“Marion A. Ross, Company A, Second Ohio Infantry, enlisted at Urbana, Champaign County, Ohio.

“Perry G. Shadrack, Company K, Second Ohio Infantry, enlisted at Mitchell’s Salt Works, Jefferson County, Ohio.

“Samuel Slavens, Company E. Thirty-third Ohio Infantry, enlisted at Portsmouth, Scioto County, Ohio.

“Samuel Robertson, Company G, Thirty-third Ohio Infantry, enlisted at Bourneville, Ross County, Ohio.

“John M. Scott, Company K, Twenty-first Ohio Infantry, enlisted at Findlay, Hancock County, Ohio.”

The act further provided for the appointment by the Governor of three commissioners to carry its provisions into effect. Thaddeus A. Minshall, late Captain of the Thirty-third Ohio Infantry; Stephen B. Porter, late Sergeant of the Second Ohio Infantry, and Earle W. Merrey, late Sergeant Major of the Twenty-first Ohio Infantry, were appointed as such commissioners.

They have concluded their labors and we are here in the name, by the authority and on behalf of the Commonwealth of Ohio to dedicate the monument they have erected to the sacred purposes it is intended to subserve.

We have come, therefore, at the bidding of a great and far distant State, to gather about these graves, as the accredited representatives of her four millions of people. It is an extraordinary spectacle.

Who were these men? What were the circumstances of their execution? What offense had they committed? And what are the purposes to be now accomplished?

This is an appropriate time and place to ask and answer these questions.

But little is known of Andrews prior to the beginning of the war, except that he was a house painter by occupation, and had been residing at Flemingsburg, Kentucky, for two or three years, where he was well known and highly esteemed. He was a man of fine physique, pleasing address, superior intelligence, daring spirit, remarkable self-possession, and endowed in a striking degree with the power of swaying others and inspiring them with confidence in his ability to accomplish his undertakings. He was a natural and exceptional leader of men. He was an uncompromising Union man, and actively and efficiently opposed the spread of secession sentiment in his county. Shortly after the outbreak of hostilities he was appointed a Deputy United States Provost Marshal, and by a succession of incidents and experiences soon drifted into the hazardous occupation of a scout and spy for the Union Army. He was singularly adapted to the work he thus undertook, and quickly gained the confidence of the Generals he served. He made numerous excursions into the enemy's country, and his reports were uniformly found to be reliable, instructive and valuable.

Merely as an example of his work and adventures, it may be stated that under pretense of furnishing medical supplies, he preceded Grant at Fort Donelson, made a sketch of the fortifications and approaches, and gained an accurate knowledge of its garrison, stores and equipments.

All the others were privates of the respective commands named, except William Campbell, who was related to Shadrack and visiting him at the camp, when he joined the expedition.

All were men from the humble walks of life, but all were distinguished for good character, intelligence, fidelity, bravery and efficiency. They had no previous history, other than their short service in the Army, to which any special interest attaches. They had enlisted as hundreds of thousands of others did, solely that they might do, in their capacity of soldiers, acting under the orders of their superiors,

whatsoever it might be in their power to do, to preserve the union of these States. They had no motive but patriotism; no purpose but such as duty might enjoin. Such were the men whose bodies lie buried in this group of graves.

What were the circumstances of their execution and what offense had they committed?

When Buell planned his advance from Nashville in the early spring of 1862, he was impressed with the importance of breaking up railroad travel and transportation between Atlanta and Chattanooga.

About the 1st of April, acting under his orders, Andrews, with five picked men, made his way to Atlanta, with the purpose of somewhere in that vicinity on the Western & Atlantic Railroad, seizing a train, rushing north with it to Chattanooga, burning bridges and destroying tracks as he went. He depended for the success of his plan upon the co-operation of a friendly locomotive engineer, with whom he was acquainted, who was employed on the road, but he did not find him as anticipated and was compelled to abandon his undertaking.

All made their way safely back into our lines just as the Battle of Shiloh was being fought. Buell had marched to the assistance of Grant, and Andrews reported to General Mitchell at Shelbyville. He at once gave him anew the task in which he had just failed.

To understand and appreciate its nature and importance, it is necessary to recur to the then existing military situation and plan of operations.

The first effort of the war on the Federal side was to protect the National Capital, command the Potomac and Ohio Rivers and confine the theater of war to the Southern States.

The next was to occupy and hold the non-seceding Southern States of Maryland, West Virginia, Kentucky and Missouri. The third was to capture Richmond and the Mississippi River. The first two of these purposes had been accomplished. We were at work on the third. The first attempt in its accomplishment was to separate the Confederate Armies of Virginia from those of the West by advancing a strong

central column across Kentucky and Tennessee and establishing it firmly on the Charleston and Memphis Railroad, which, with other lines, directly connected Richmond, Knoxville, Chattanooga, Stevenson, Huntsville, Decatur, Corinth and Memphis.

In accordance with this general plan, Grant had captured Forts Henry and Donelson and had reached Shiloh on the way to Corinth and the coveted railroad, with Vicksburg for his ultimate objective point. Buell had crossed Kentucky, occupied Nashville, and, with his main force, hurried on to Shiloh, leaving Mitchell to protect central Tennessee, with a discretion, as to his operations, broad enough to allow him to advance and seize the railroad if opportunity therefor should be presented, though it may be safely asserted that it was scarcely contemplated that any such extended and important movement would be undertaken.

But Mitchell was brilliant, restless and aggressive to an extraordinary degree, and while Grant and Buell were fighting he, having advanced to Shelbyville, was planning what, if it had not miscarried, would have been one of the most splendid strokes of the war.

A glance at the map will show that immediately in front of him, about fifty miles distant, was Huntsville; twenty-five miles from there to the west was Decatur; about seventy miles from there to the east was Stevenson; some thirty or forty miles further on was Chattanooga. The great problem was to seize and hold this railroad at some of these points, but the one point above all others, at which to seize and hold it, was Chattanooga. Establishing his army at Stevenson, Huntsville or Decatur, left the railroad open directly to Richmond, and, by way of Atlanta, to the whole South, to concentrate troops to dislodge him. But establishing it at Chattanooga meant not only cutting in two the line between the East and West, but it also cut in two the North and South line, and gave us control of communication back to Nashville, while it blocked the northern outlet of the Western & Atlantic and made it of no avail to the enemy for hurrying troops from one end of his line to the other. It would have

been a practical separation of the Confederate Armies and a dismemberment of their territory. Another all important consequence would have been the liberation of East Tennessee and the swarming of thousands of brave and loyal men to the Union standards. Such results at that moment could scarcely have been less than fatal to the Confederate cause.

The question that concerned General Mitchell was, therefore, how to throw himself into Chattanooga and hold it, until he could be properly reinforced. To march directly on the place was not possible. It was one hundred miles distant and the way lay over mountains almost impassable. If he reached it at all, it must be by a movement so rapid, and so well protected, that he could take it by surprise, and with the enemy so deprived of ability to quickly rally forces against him, that he could have time to gather together all necessary reinforcements to enable him to maintain his success.

It was while he was studying this question that Andrews reported to him upon his return from his unsuccessful visit to Atlanta. A long and careful conference followed between the General and his trusted scout. The details of that consultation will never be known. There were no third parties present, and ere either was able to tell, death closed the lips of both men. But the result we do know. It is that which brings us here today.

Briefly stated, it was determined that Andrews should be at once provided with a larger company of picked men and with them he should again attempt the task assigned him by Buell, in the performance of which he had just failed.

The commanders of the Second, Twenty-first and Thirty-third Ohio Regiments were called upon to furnish the men needed. Only those were to be chosen who were of the most exceptional good character for intelligence, judgment, coolness, bravery and resolute courage. They were to embrace among their number at least two skilled locomotive engineers. They were to report to Andrews and implicitly obey his orders, with no other information given them, as to the character of the enterprise in which they were to engage, than that they had been selected because of their special fitness for an extra hazardous and extraordinarily important service.

The detail was made, and, including Campbell, twenty-one men reported to Andrews on the evening of Monday, the 7th day of April, 1862, and under instructions from him, provided themselves with side arms and citizens' clothing, and set out on foot in small squads, traveling by different roads, to make their way to Chattanooga, and thence by rail to Marietta, Georgia, at which place they were to take passage on the north bound train passing there about daybreak Friday morning, April 11th. At some point, and in some manner, to be determined by the exigencies of the situation, they were to capture the train, rush north with it to Chattanooga, cutting telegraph wires, burning bridges and tearing up the track as they went; reaching Chattanooga they were to sweep by and pass on towards Stevenson, until they should meet Mitchell, who, while they were doing their part, was to rapidly advance from Shelbyville to Huntsville, reach and take it at daybreak on Friday morning, with, it was hoped, a large number of cars and locomotives known to be there, and, sending a detachment to occupy Decatur and leaving another to hold Huntsville, he was to capture the early morning train going east, and with it and such other rolling stock as he might be able to utilize, hurry forward by rail with the rest of his men towards Stevenson, until he should meet Andrews and his party, and then, if they had been successful, dash on to Chattanooga and seize the coveted prize.

Andrews and his party started on their journey in a heavy rain; the storm increased and persistently continued, swelling streams and making the roads heavy and well-nigh impassable. He was in this manner so far impeded that he found it necessary to postpone the start north from Marietta one day. He possibly thought the difficulties he was encountering would similarly delay Mitchell, but that impetuous and unconquerable spirit overcame all obstacles and kept his engagement with his accustomed promptness. The change in the programme was in consequence fatal. Had Andrews been on time he would have met only the regular south bound trains, which he would have had no trouble to pass, since he had their schedule and knew when and where to meet them. But on Saturday all this was changed.

When Mitchell suddenly broke upon Huntsville Friday morning he was just a moment too late to intercept the east bound train. A cannon ball aimed at the departing locomotive missed its mark, and had no other effect than to give it speed, as it swept on to spread fright and alarm. The news that Mitchell was at Huntsville caused the railroad officials to fear he would next be in Chattanooga and to at once take steps to put all cars that could be spared out of harm's way.

The consequence was, that the road that was clear on Friday was teeming with extra trains going south on Saturday. Andrews did not know this until it was too late, and therefore on Saturday morning he and his party boarded the north bound train at Marietta disguised as passengers, with tickets purchased to different destinations, to avoid arousing suspicions, and entered upon a daring attempt to execute his well-planned task.

When Big Shanty was reached a stop was made for breakfast. As soon as the conductor and trainmen, including the engineer and fireman, had entered the eating-house, the party quietly but quickly and in an apparently accidental way that did not attract attention, passed forward, uncoupled the locomotive with three forward empty box cars, jumped aboard, and, with Knight and Brown, the two engineers of the party, in the cab, were under way in an instant.

Nothing could have been more successful than the start. They had not anticipated getting the train without a fight, and with their revolvers they were prepared to make one. Their good fortune was all the more singular by reason of the fact that a Confederate Regiment was in camp immediately at the depot, and the guards were on duty within a few feet of them, as they pulled out.

With only a few stops, to cut wires and lift a rail, the run to Kingston was easily made, but there trouble commenced. With his men shut up in the box cars, Andrews side-tracked to allow the regular down freight to pass. At once curiosity was excited in the minds of all about the depot by the appearance of the well-known engine in charge of

strangers, with only three box cars attached, instead of the regular train with the regular crew. But Andrews was equal to the emergency, and with a statement that he had seized the train by Government authority, and that it was loaded with powder, which he was directed to hurry through to Beauregard, succeeded in allaying suspicion and repressing inquiry.

In that time of extreme excitement, especially following a great battle, almost any story could be told with impunity.

When at last the belated regular freight came, imagine the chagrin and impatience of Andrews at seeing on the last car the red-flag signal that another train was following. There was no help but to wait, and thus he was compelled to continue to wait for one extra after another, until a whole hour was consumed.

Finally the way was clear and dull despair changed to bright hope of glad triumph, as he once more took the track.

Just four minutes later a pursuing engine arrived. It bore W. A. Fuller, conductor of the captured train, and Mr. Anthony Murphy, an officer of the road, and some others who had joined in the chase.

Great as was the daring spirit displayed by our heroes, it was fully equalled by the pluck, perseverance and courage shown by Fuller.

When it was announced to him, sitting at the breakfast table, that his train had been captured, he rushed out just in time to see it pass from sight.

Without an instant's hesitation he started after it on foot, and kept after it, until about two miles from the station he came up to a hand car some section men were using. He pressed it into service and sped on his way, neither dismayed nor discouraged by being thrown headlong from the track by a displaced rail, until at the junction of a short spur of the road, on the north bank of the Etowah he found the engine on which he rode into Kingston. His game was gone, but he was now able to follow on more equal terms.

While he was getting information, making explanations, recruiting and arming his forces and providing transportation, Andrews stopped to cut wires and obstruct the track. Before he had finished Fuller was after him and upon him.

It is impossible in an address of this character to describe the flight, the chase, and the capture that followed. It is not too much to say that in all the history of the war, nothing was wilder, more reckless, more daring or more thrilling.

With difficulty, though without much loss of time, Andrews managed to get by other down trains and succeeded, after passing each station, in cutting the wires to keep all the news behind him. To distance his pursuers against such obstacles required the most dangerous speed.

The run from Adairsville to Calhoun, described by J. A. Wilson, who acted as fireman for Brown and Knight, may be given as a descriptive sample. He says:

"Our locomotive was under a full head of steam; the engineer stood with his hand on the lever, with the valve wide open. It was frightful to see how the powerful iron monster under us would leap forward under the revolutions of her great wheels. Brown would scream to me ever and anon, 'Give her more wood,' which command was promptly obeyed. She rocked and reeled like a drunken man, while we tumbled from side to side like grains of popcorn in a hot frying pan. It was bewildering to look at the ground or objects on the roadside. A constant stream of fire ran from the great wheels, and to this day I shudder as I reflect on that, my first and last locomotive ride. It has always been a wonder to me that our locomotive and cars kept the tracks. At times the iron horse seemed to literally fly over the course, the driving wheels of one side being lifted from the rails much of the distance. We took little thought of the matter then. Death in a railroad smash-up would have been preferable by us to capture."

When sufficient distance was gained to admit of it, they would stop and cut wires, lift a rail, or in some way obstruct the track. For the purpose of supplying fuel, with which to burn bridges, they had at all their stops thrown on board cross-ties, sticks of wood and whatever was suitable, that they could lay hold upon, and when so hard pressed they could not take time to make further attempts to take up rails, they

knocked a hole in the rear end of their hindmost car, and at intervals dropped them out, with the hope of impeding, if not derailing and destroying, their pursuers. Most of these, however, in the most aggravating manner, bounded from the track. Their final efforts were to abandon their cars, one at a time, by uncoupling and leaving them to block the way. Their last one they first set on fire and then left it on the Chickamauga bridge, while the whole party took to the engine and tender.

But all was of no avail. Their pursuer was as relentless as fate, and no obstructions or danger could delay or appall him. When he came to a broken track, he lost no time repairing it than it had required to break it, and it seemed the work of but a moment to stop and remove obstruction, and, finally, when he came to the cars that had been dropped, almost without slackening of speed, he coupled them on in front and pushed them ahead of him to the next siding.

And thus it was that on, and on, and on, mile after mile, through Calhoun, Resaca, Dalton, Tunnel Hill and Ringgold; over bridges and fills, through cuts and tunnels and around curves; up grade and down, with rattle and roar, and clouds of smoke and streams of fire, the flight and the chase were kept up, until finally, after having run more than one hundred miles, for the want of fuel, water and oil, all of which had been exhausted, unable longer to keep up steam and continue the race, Andrews commanded his men to desert the engine, and separately or in small squads, make their escape as best they could.

Judge Advocate General Holt says, in his report to Secretary Stanton:

“The expedition thus failed from causes which reflected neither upon the genius by which it was planned, nor the intrepidity and discretion of those engaged in conducting it. But for the accident of meeting the extra trains, which could not have been anticipated, the movement would have been a complete success, and the whole aspect of the war in the South and Southwest would have been at once changed. The expedition itself, in the daring of its conception, had the wildness

of a romance, while in the gigantic and overwhelming results which it sought, and was likely to accomplish, it was absolutely sublime."

They scattered in all directions and some of them well-nigh succeeded in eluding their pursuers, but in time all were hunted down, captured and taken before the military authorities at Chattanooga, to whom they fully disclosed that they were soldiers, giving their names, companies and regiments accurately, together with full information as to the character of their service and how, by the orders of their superiors, they had been sent upon it. This should have secured for them that decent and honorable treatment to which prisoners of war are always entitled. That they had gone into the enemy's country in citizen's clothing did not alter the case, since they had not gone as spies, and had not acted as such, but had gone by commands they were bound to obey, not to depredate and rob or steal, but to strike and destroy a *quasi* public property, the destruction of which had become a military necessity in the work immediately contemplated. Their mission was not different in nature from many upon which Confederate soldiers had come within our lines, and the disguise of citizens' clothing for such a purpose was justified by scores of precedents the enemy had given. In no instance during the whole war, from its beginning to its ending, was any Confederate soldier, similarly captured, treated otherwise than as a prisoner of war; but no such good fortune awaited this hapless band. On the contrary, they were treated worse than the vilest and most dangerous of felons should ever be treated in any civilized country. They were promptly and rudely consigned to an imprisonment so atrociously barbarous as to disgrace even the passions of both slavery and secession. Their prison was the half underground basement of what was then known as the old negro jail. It was a room exactly thirteen feet square, with no entrance whatever, except on a ladder, by a trap door, through the ceiling. It had no furniture, or conveniences of any kind or description, except only four buckets for water and slops. No light nor air was admitted, except through two grated and barred holes in the

wall, each of which was about twelve inches square. Into this dungeon twenty-two men were crowded, chained together in pairs and threes. There was barely room for all to stand within the space. They could sleep only on the naked floor, and in only the most cramped and tiresome positions. Here they were kept for more than three weeks, wearing their chains all the while; fed on the scantiest and poorest of rations, denied the most necessary accommodations, and only sparingly and grudgingly furnished with an insufficient supply of a poor quality of water to drink. What they suffered during this time no language can describe. If you would stake off a space thirteen feet square upon the green sward, in the open air, and compel twenty-two men to occupy it for only *one* week, during the most pleasant weather, with good water, good food, and every relief consistent with their remaining within lines, their lot would become shockingly miserable, but manifestly it would give only the faintest idea of the heartless brutality to which these young heroes were subjected. Death itself on the field of battle would have been far preferable.

Finally Andrews was tried by court martial and sentenced to be hanged as a spy. He was taken to Atlanta and there executed on the 7th day of June, 1862. He met his fate bravely and uncomplainingly and was buried, without shroud or coffin, with his feet still chained together. In 1877 his remains were removed to this spot.

The next step was to take twelve of the party to Knoxville and there put them on trial one at a time. When seven of them—the seven who lie buried here—had been tried, the proceedings of the court were interrupted by the approach of the Union troops, and all, including those left at Chattanooga, were hurried away to Atlanta for safe-keeping.

Those who were tried were ably defended, but fruitlessly. From the beginning their fate was sealed, and sealed literally and cruelly. They were led to believe they would be acquitted and held only as prisoners of war, for parole or exchange, as they should have been. But on the 18th of June, 1862, without a note of warning of any kind, they were taken from their imprisonment and hanged by the neck until dead.

Nothing in all that bloody chapter of war was more revolting or less excusable. They had committed no crime. They were not spies. They were only soldiers who had obeyed orders with a bravery and daring that should have excited the admiration of the enemy, but instead these qualities appeared only to excite bitterness, hatred and malice, and death in its most appalling and ignominious form was the penalty.

I shall not dwell upon the details of that horrible hour, except only to snatch from them their one single bright feature. Just as they were about to be swung into eternity, George D. Wilson, acting as spokesman for his comrades, craved permission to speak a few words. The favor was granted, and thereupon he made a speech that deserves to live as long as the history of that Rebellion is read of men. There were no stenographers present, but universal account from all who heard it confirms the following, as a substantially correct published report of what he said:

"He began by telling them that he was condemned to death as a spy, but he was no spy. That he was simply a soldier in the performance of duty; he said he did not regret dying for his country, for that was a soldier's duty, but only the manner of death which was unbecoming to a soldier. Even those who condemned them well knew that they were not spies. Then leaving the personal question, he declared that he had no hard feeling toward the South or her people; that they were fighting for what they believed to be right; but they were terribly deceived. Their leaders had not permitted them to know the facts and they were bringing blood and destruction upon their section of the Nation for a mere delusion. He declared that the people of the North loved the whole Nation and the flag, and were fighting to uphold them, not to do any injury to the South, and that when victory came the South would reap the benefit as well as the North. The guilt of the war would rest upon those who had misled the Southern people, and induced them to engage in a causeless and hopeless Rebellion. He told them that all, whose lives were spared for but a short time, would regret the part

they had taken in the Rebellion, and that the old Union would yet be restored, and the flag of our common country wave over the very ground occupied by his scaffold."

Another moment and that brave, patriotic, truthful and prophetic tongue was forever hushed in death. A published account of the tragedy concludes as follows:

"No coffins had been provided. The bodies were laid in a shallow trench, just wide enough for their length and long enough for all the seven to lie close together, and then the earth was filled in upon them."

Thus it was that eight of the ill-fated party perished. After several months further imprisonment, eight others broke guard and escaped, and still later the remaining six were exchanged. All who survived returned to their regiments. Some were so disabled by the hardships through which they passed that they were soon discharged, but most of them continued to render good service until the end of the war. All were given medals of honor and most of them were promoted to the rank of commissioned officers.

General Rufus R. Dawes, Member of Congress from Marietta, Ohio, himself a gallant soldier, who knew how to appreciate such services and hardships, labored zealously to secure a special and suitable pension for them. It passed the House, but failed in the Senate. It is to be hoped this appropriate act of justice will yet be done.

It would be interesting to recount the daring exploits of those who escaped, and set forth the eventful experiences of those who remained prisoners, but time, and my particular duty, admonish me to confine myself to the dead. When the war ended and the Stars and Stripes did once more wave over the spot occupied by that loathsome scaffold, and the great Nation, for which they had given their lives, cast about for her broken and scattered jewels, that trench was remembered, and with loving hands its occupants were taken up and gently borne to this spot, that they might here sleep in honor with that Nation's dead.

Under all the circumstances that act might well have been the last tribute. But now, after the lapse of twenty-nine years, comes this day's work. And what years they have been! Since these men died the greatest part of that which is best, most brilliant and most glorious in our history has been written.

At that time Lincoln had not yet issued his Emancipation Proclamation, Vicksburg, Gettysburg, Chickamauga, Lookout Mountain, Mission Ridge, Atlanta, The March to the Sea, The Wilderness, Appomattox, Reconstruction, Universal Liberty and Political Equality for all men were yet to come. It would not have been strange if these great deeds had forever diverted attention from the event under consideration, or had destroyed appreciation for it by contrast and comparison.

If these men had been great commanders, great scholars, great statesmen, or great citizens, in any ordinary sense of the term, our presence here would need no explanation. But they were the very opposite. They were simply typical, volunteer, Ohio boys, hardly out of their teens, without name, family, influence, or station, to cause them to be remembered and honored, as they are remembered and honored today.

Why is it, then, that we are here? What purposes are we seeking to promote? Why should the General Assembly of a great State turn aside from its ordinary cares and duties to take such action as has been mentioned? Why should a Justice of the Supreme Court and the two distinguished and honored citizens, who are his associates on the commission, labor, as they have, with zealous pride to discharge the duties that have been entrusted to them?

The answer is plain and simple.

In the first place, there is no bitterness, vain glory, or unworthy spirit of any kind involved. It is but stating the exact truth to repeat, as fairly applicable to the whole of that great army, who wore the blue, the dying words of Wilson, "that he had no hard feelings toward the South or her people. That he loved the Union and the Flag, and was fighting to uphold them, and not to do unnecessary injury to any one."

Even in the midst of that great struggle they did not want to kill anybody, except only as it became necessary to kill

somebody to kill secession. They believed in the Union of these States. They believed the highest interests of the South, as well as the North required its preservation, and believing slavery to be the disturbing cause of all our differences, they gladly struck it down. But with it all there was no malice.

And as it was then, so is it now.

The one great thought that lies at the bottom of every such demonstration as this is that of profound gratitude to the men who saved us, and supreme thankfulness to Almighty God for the great blessings that have come to our whole country through the victory of the Union armies. This sentiment grows with the years and with our increasing greatness and prosperity as a people. Time, therefore, but makes more manifest our duty to all who periled and sacrificed their lives for these priceless results. But upon these particular men fell an uncommon misfortune. They not only lost their lives, but they also lost them in such a way as to place a stigma upon their memory.

Ohio is here today to remove that stigma. By this action she reclaims them from all imputation of crime, and effaces forever the ignominy of a felon's death. She proclaims to the world and future generations that they were not thieves nor marauders, but brave and honorable men and soldiers; that their punishment was unmerited, and that their names shall shine on the roll of honor among the brightest of all that illumine the pages of our history.

It is but another added to the many illustrations the world has given of the impotency of blind malice to blacken virtue, disfigure worth and pervert the truth. Socrates has been all the nearer and dearer to the world's generations because compelled to drink the fatal hemlock. Cicero has grown continually greater and grander through all the centuries that his name has outlived the wicked madness that condemned him to death. And as truth and justice have vindicated these and thousands, so, too, have they vindicated those whom we are here to honor.

This monument is our visible and enduring testimonial of that fact. We erect and dedicate it in an impressive presence.

Not only are we in the midst of the dead, but we are surrounded with bloody fields and historic heights. Every spot on which the eye rests is hallowed ground. Our memories are filled with the deeds of other days. Visions, long gone, come back. A torn, dismembered and bleeding country rises before us. Grief and mourning are in every household. Countrymen are striving against countrymen. Two flags are in the sky. Two governments are struggling for the mastery. Hooker is again battling in the clouds, and once more Thomas is storming Mission Ridge. Again we see the moving columns, waving flags and glittering bayonets. Once more we hear the roar and tumult of battle—the rattle of musketry—the shriek of shells—the shouts of the victors—and the groans of the dying. Oh, horrible nightmare! Break away from it and look again. The scene is changed. The armies have vanished. Where was war reigns peace. Warring States have become loving sisters. One flag floats for all. The same institutions everywhere prevail. The curse of slavery is no more. The Union has been preserved. The best blood of the Nation has washed out the one and cemented the other. The Constitution of the fathers has been perfected by the sons. The Nation has entered upon a new life. We are already the strongest, richest and happiest people on the face of the earth, and yet all that we are is but a preface to the grandeur that awaits us.

What has wrought this transformation? The Union arms. Their triumph secured all these blessings.

Who can paint the picture we would have presented today had the Rebellion succeeded? Disunited—slavery here—free States yonder. An irrepressible conflict, no longer restrained by common interests. The Ohio river a boundary line between hostile governments. As many flags as fancies, and as many rebellions as Jeff Davises. Standing armies—burdensome taxes—depreciated credit—respected by nobody—despised by all—even by ourselves.

And yet there are men who sanctimoniously roll up their eyes and lugubriously proclaim that "Only God knows which side was right."

This monument is a solemn protest against such silly and wicked nonsense. The man who would degrade the war to a mere trial of strength or display of valor, is guilty of a crime second only to the Rebellion itself. Valor there was on both sides, and that, too, of the highest quality, but the sublimity of the struggle was in the principles at stake. They related to our moral as well as our political welfare. Human rights and personal liberty, as well as American nationality, were bound up in the issue. Free popular government was on trial. Success was our triumphant salvation—failure would have been our unspeakable ruin.

Who are so blind as not to see? Who so unfaithful as not to accept these results and abide by them? Their good influences have not been confined to ourselves. While uplifting us they have gone abroad to be felt in every civilized country on the face of the earth. An enlargement of the rights of the subject in England, a republic in France, universal manhood suffrage in Germany, a substantial curtailment of the prerogatives of royalty and a broader recognition of the right of the people everywhere to participate in their own government, are but a few of the many important consequences that have resulted from the impetus our achievements have given to the cause of humanity. Who so insensible to all this glory, as not to be proud of the United States of America? Only he who grovels in the darkness of the past. Thank God that darkness can not last much longer. The brightness of coming greatness will shortly dispel its faintest trace. Soon the last of the war generation will be gone, and almost ere we know it our sixty-five millions of people will have grown to more than a hundred millions. In that time no one will be heard expressing doubt as to the right of that great struggle. With our merchant marine on every sea, our ships trading in every port, and the influence of our institutions dominating the continent and inspiring the world, nobody will mourn for slavery, defend rebellion or chatter about State Sovereignty. Obeying a common Constitution and following a common flag to a common destiny, the prejudices that have drawn sectional lines will be swallowed up in a

generous rivalry, that knows not either North, South, East or West, but only a common pride in every portion of our common country. That glad day is swiftly coming. Let us run to meet it.

After the close of Governor Foraker's speech the cord attached to the veiling of the monument was pulled by an eight-year-old boy, Marion L. Ross of Christiansburg, Ohio, nephew of Marion A. Ross, one of the executed Raiders, and the only male survivor of the Ross family.

The event closed with speaking by Major C. W. Norwood, of Post 45, pledging that it and Post No. 2 would look after the monument as a trust. Pledges of support in this work were made by Mrs. Hattie S. Stewart on behalf of the W. R. C., and by John Patten on behalf of the Sons of Veterans. The benediction was pronounced by Rev. William Pittenger, a surviving Raider, which, after a "go-as-you-please" speaking meeting, closed the exercises.

ADDRESS OF HON. J. B. FORAKER

ON THE LIFE, CHARACTER AND PUBLIC SERVICES OF
SALMON P. CHASE, LATE CHIEF JUSTICE OF
THE UNITED STATES, DELIVERED BEFORE THE
CIRCUIT COURT OF THE UNITED STATES, AT
SPRINGFIELD, ILLINOIS, OCTOBER 7, 1905, ON
THE OCCASION OF THE PRESENTATION TO THE
COURT OF THE FAMOUS PORTRAIT OF MR.
CHASE PAINTED BY COGSWELL AT THE REQUEST
OF JAY COOKE.

May it Please the Court: The career of Chief Justice Chase was too eventful and too intimately connected with the great duties of a great period in our country's history to be justly portrayed in a brief address such as is called for on an occasion of this character.

Mere glimpses are all that can be taken of even the most important features of his life, while many minor events must be entirely ignored, which, under other circumstances, might be dwelt upon with both interest and propriety.

Fortunately in that respect, what we are most concerned about here today is not his childhood, or his private life, domestic or professional, but his public life, and particularly that part of it which led up to and included the Chief Justiceship.

He came of good stock and had the good fortune to be born poor, and to be blessed with a powerful physique, an attractive personality, a dignified presence, a strong intellectual endowment, and such a predisposition to seriousness as to make frivolities of all kinds impossible.

He was also fortunate in being identified with both New England and the West, for thus he acquired the culture and

refinement of the one section and the vigorous and independent thought and progressive activity of the other.

He spent several years of his boyhood in the family of his uncle, Bishop Chase, of the Protestant Episcopal Church, who was stationed during this period at Worthington and Cincinnati, Ohio. After this he became a student at Dartmouth College, where he was graduated in the classical course with that mental power of analysis and logical thought and expression which nothing can develop quite so well as a thorough study of the Latin and Greek languages.

He next spent three years in Washington, during which period he read law under William Wirt, then Attorney General of the United States.

The relation of student and preceptor seems, however, to have been little more than nominal, since it was related by Mr. Chase that Mr. Wirt never asked him but one question about his studies. He also states that when he came to be examined for admission to the bar he found himself so illy prepared that he passed with difficulty, and chiefly, as he always thought, because he informed Mr. Justice Cranch, who admitted him, that he intended to locate in the West.

During his stay in Washington he had many advantages that compensated in some degree for this lack of preparation for the practice of his profession

He was on terms of social intimacy with Mr. Wirt's family, whose position was such that he was not only brought in contact with all the prominent men then in control of public affairs, but also with all the great questions with which they were at the time concerned.

Being of a studious and serious turn of mind, with such experiences and amid such surroundings he naturally drifted into the study of the political problems of the day, so that when in 1830, at the age of twenty-two years, he opened a law office in Cincinnati, he was already almost as much occupied with affairs of State as about legal principles.

He chose Cincinnati for his future home because at that time it was the largest and most flourishing city of the West, and on that account gave the most promise of opportunity to a young lawyer ambitious to achieve success and distinction.

He did not foresee that the slavery question was soon to become acute, and that he was to entertain views and take a position with respect to that institution of such ultra character that a less hospitable community for him could scarcely have been found in any Northern State than that border city, situated on the line that divided the free from the slave States, was to become.

If he had foreseen all this it probably would not have changed his course, for he was so constituted by nature that he might have felt that duty required him to station himself at that outpost as a sort of advance guard of the anti-slavery movement.

For several years he labored industriously to gain a foothold in his profession without making any more than ordinary progress.

His biographers record that during this period he had time for social functions, magazine articles, some newspaper work, and, most important of all, for a revision and editing of the statutes of Ohio, which he published with a very able introduction in the nature of an historical sketch of the State and its developments. Still, however, he forged ahead, not rapidly, nor brilliantly, but surely, constantly and substantially.

His clients gradually increased in numbers and the work they brought him improved in quality until he had a very fair business, almost altogether of a commercial character, but his practice was still modest, involving neither large amounts nor complicated questions, and his position at the bar, although respectable, was yet comparatively humble and unimportant, when suddenly, unexpectedly and unintentionally, he was drawn into the controversy about slavery and was started on a public career in the course of which he quickly became a political leader and achieved much fame as a lawyer.

ANTI-SLAVERY LEADER.

The mobbing in 1836 of the *Philanthropist*, an anti-slavery newspaper, published in Cincinnati by James G. Birney, aroused him, as it did thousands of others, to the intolerance of the slave spirit and the necessity of resisting its encroachments by protecting free speech and a free press if the rights

of the white man, as well as the rights of the free colored man, were to be preserved. He at once took a pronounced stand as an anti-slavery man, although he was always careful then and afterwards, until the Civil War, to declare and explain that he was not an Abolitionist, and that he had no desire to change the Constitution or interfere with slavery in any way in the States where it was already established.

Although most of the time "out of line," he claimed to be a Whig until 1841, but professed to believe in the States Rights, Strict Construction doctrine of the Jefferson School of Democracy, and thus reconciled his attitude with respect to slavery in the States and his opposition to its extension beyond the States by the contention that the States in their sovereign capacity had a right to authorize and protect the institution, although a great evil, if they saw fit to do so; and that the States had this power because it belonged to sovereignty and had not been delegated by the Constitution to the Federal Government; and that because such power was not delegated to the General Government, it had no power to authorize, protect, or even continue the institution in any district, territory or jurisdiction over which it directly governed.

Both his politics and his law were severely criticised, for they made it impossible for him to fully satisfy any party or faction of that time.

He did not go far enough for the Abolitionists, and went too far for both the Whigs and Democrats. One repudiated him because he was pro-slavery as to slavery in the States, and the other because he not only opposed the extension of slavery into the Territories but advocated its abolition in the District of Columbia, for which he is credited with drafting one of the earliest petitions presented to Congress. It naturally followed that he soon had trouble to know to what political party he belonged; a trouble that continued to plague him all his life and apparently led him to try in turn to belong to all of them, but without finding satisfaction in any, not excepting those practically of his own creation.

Thus we find him calling himself a Henry Clay National Republican in 1832, a Harrison Whig in 1836, an out and

out Whig in 1840, a Liberty man in 1844, a Free Soiler in 1848, a Democrat in 1851, so enrolling himself in the Senate, a Liberty man again in 1852, a Republican in 1856, and afterward until it was foreseen that he had no chance against Grant to be nominated by the Republican Party for the Presidency in 1868, then suddenly becoming a Democrat again, seeking the nomination by that party, and in that connection claiming that aside from slavery questions, so far as basic principles were concerned, he had been a Democrat all his life.

On top of all this we find him writing to a friend shortly prior to the meeting of the Liberal Convention that nominated Horace Greeley at Cincinnati in 1872, that if it should be thought that his nomination would promote the interests of the country he would not refuse the use of his name, thus showing a willingness to change parties once more on the condition expressed.

It is probably safe to say that he had membership in more political parties, with less enjoyment in any of them and with less mutual obligation arising therefrom, than any other public man America has produced.

At any rate, it was with this kind of zigzag party affiliations he laid the foundations and built on them the claims on which he was elected to the Senate in January, 1849, by a fusion of the Democrats, Anti-Slavery Democrats, Democratic Free Soilers and Independent Free Soilers, and felt that he had a right to complain, as he did, because the Whigs, Anti-Slavery Whigs, and Free-Soil Whigs would not also vote for him. In making that complaint, he ignored the fact that it was charged and believed by the Whigs that his election was brought about by a bargain, which, among other things, provided that two contesting Democrats, enough to give that party a majority, were to be admitted to seats in the House. There was undoubtedly a clear understanding arrived at but like some other men of more modern times, such deals appear not to have been offensive to him, when made in his own behalf, since thereby the praiseworthy result was reached of securing his services to the public. They were

bad and to be execrated only when made by others, and in the interests of somebody else, whose services were not, in his opinion, so important.

His complaint was not, however, without plausibility, for he at least had equal claims on all parties and factions named, except the two Independent Free Soilers, to whom he really owed his election, since he had belonged to all, had repudiated all, and had been repudiated by all.

And yet, most of these party changes, perhaps all except that of 1868, came about naturally, and, from his standpoint, strange as it may appear, consistently also. His opposition to slavery being paramount, and the Whig Party failing and refusing to become an anti-slavery party, he was lukewarm and irregular in its support until the death of Harrison and the accession of Tyler, when he lost all hope of it ever meeting his views. He then openly deserted it and joined the Liberty party and at once devoted himself to its reorganization and upbuilding, which party, however, he in turn, abandoned, and helped to disorganize to make way for the Free Soil Party of 1848, which he actively helped to form by bringing about a fusion of Liberal Party men, Barnburners, Anti-Slavery Whigs, Anti-Slavery Democrats, and all other dissatisfied classes who could be gathered into the fold; a combination of elements incongruous as to all questions except that of hostility to slavery, about which they had the most fiery zeal. This party, so constituted, nominated Martin Van Buren as their candidate for the Presidency, in a Convention over which Mr. Chase presided, and of which he was the dominating spirit, but they largely strengthened themselves and their cause by the ringing declarations of their platform, of which he was the chief author, for "Free Soil, Free Speech, Free Labor and Free Men."

What Chase evidently most wanted in connection with that Convention was the substance and not the shadow—the platform in preference to the candidate, for it was well known that the candidate had no chance of an election, and would therefore pass away with the campaign, while the principles enunciated would be educational, and would live to do service in the future.

Thus it was that while manifesting instability, if not contempt, as to party ties and associations, by flitting out and in from one party to another, he was yet steadfastly, zealously and efficiently making continuous war on slavery, and all the while coming into ever closer affiliation and co-operation with the out-and-out Abolitionists; for while nominally working only as an anti-slavery man, he was largely aiding in the development of a radical Abolition sentiment. His process in this respect was inevitable, for as the discussion proceeded he was necessarily more and more drawn into it—explaining, defending and advocating his views.

All the while his horizon was widening, and he was becoming acquainted by correspondence and otherwise, with the leading anti-slavery men of all the other States, both East and West. This multiplied the demands upon him for an expression of his sentiments, and so during this period he wrote many articles for the newspapers and magazines, attended political conventions, wrote platforms, and addresses to the public, and made numerous speeches on all kinds of public occasions. Being a forcible and ready writer, and a logical and convincing speaker, although too deliberate to be magnetic, he was constantly in demand, and as constantly making valuable contributions to the general literature that was used against slavery by its enemies of all shades and degrees.

Along with this growth of political prominence and influence before the public, there came to him, as a lawyer, a series of cases, all arising, in one form and another, under the Fugitive Slave Law, by which he was given repeated opportunities, which he well improved, of developing and presenting to the country the legal aspects of the controversy in a way that attracted universal attention to his cause and to himself as one of its ablest and most powerful exponents.

He was not successful except on some technical points in any of these cases, and probably did not expect to be; and in most if not all of them, he was paid inadequate fees, if any at all; but he labored and strove in them with all the energy that confidence of success and the most ample compensation could inspire. He thoroughly and exhaustively briefed them,

and raised and insisted upon every point that could be made, both technical and substantial. In one of these cases that went to the Supreme Court of the United States, he artfully placed before the whole country, as well as the Court, all his constitutional and other arguments not only against slavery but also against a Fugitive Slave Law, and particularly against its application to any but the original thirteen States, and therefore against its application to Ohio.

He was overruled, as he must have expected he would be, but he was purposely addressing himself to the country as well as the Court, and had a confidence, that subsequent events vindicated, that he would eventually secure a verdict at the hands of his fellowmen that would right the whole system of wrong that he was combating.

IN THE SENATE.

In the Senate he was out of harmony from first to last with both the Democrats and the Whigs. He at first insisted upon calling himself a Democrat, although the Democrats who were in the majority practically disowned him, and in the Committee assignments refused him any substantial recognition. This did not seem to either embarrass or handicap him. He had, in consequence of being practically relieved from Committee work, all the more time for the consideration of the slavery question, which was then rapidly becoming more and more the all absorbing question of the hour.

He had not been long in his seat until he found opportunity to speak on that subject. From that time until the end of his term he was the real leader of the anti-slavery forces of both the Senate and the House. They were few in number, but they were able and forceful men, who stood up manfully and inspiringly for a sentiment which was then unpopular but which was soon to control the Nation.

His most notable efforts were made in opposition to the Kansas-Nebraska Bill. He was overwhelmingly beaten when the vote was taken, but he had so crippled and weakened the measure in the popular mind, that Douglas soon realized that while he had won the day in Congress, he had lost it before

the people, who had become so aroused that he quickly saw that the long predicted dissolution of the Whig Party and the revolt of the Free Democrats were at hand, and that a new party was forming that was destined to change the entire complexion of the political situation and bring to naught all he had gained.

The debate was one of the most acrimonious and, measured by its far-reaching consequences, one of the most important that ever occurred in the American Congress.

Chase was the target for all the shafts of malice and ridicule, but through it all he bore himself with dignity and serenity, and showed such sincerity, zeal and ability, that, notwithstanding his obnoxious views, he gained the friendship of most of his colleagues and the respect of the whole country. His personal character was always upright, and now as he came to the end of a turbulent term in the Senate, where he had been disowned and in many ways slighted and mistreated by both parties, he saw, what he had probably long foreseen, a new party forming, of giant strength and high purpose, which he had done as much as any other man, if not more, to create, and of which he was an acknowledged leader.

The Democrats, being in control of the Ohio Legislature, took his place in the Senate away from him and gave it to George E. Pugh. But instead of punishing and retiring him, as they designed, they only made the way open and easy for him to become, after a most spirited campaign that attracted the attention of the whole country, the first Republican Governor of Ohio, and as such a prominent candidate for the Presidency.

THE PRESIDENCY IN 1856.

He was conscious of the work he had done in organizing the new party, and realized that he had greatly strengthened it by leading it to its first great victory in the third State of the Union, as Ohio then was, while in New York and Pennsylvania his party associates had failed. With his strong mental powers, long experience in public life, and familiarity with all the public affairs and questions to be dealt with, it

was but natural that under the circumstances, he should expect the honor of leading his party, as its candidate for the Presidency, in its first great national contest, and that he should experience keen disappointment when he saw his claims rejected, and the honor conferred on a younger man, who had no special claims, except the popularity of an idol of the hour, who had won his prominence and the public favor not by participation in the fierce struggles and educational experiences through which the country had been passing, but by the success of a number of daring and spectacular explorations. He was solaced, however, by the thought that he was yet a young man, who could wait and grow with his party, and become its candidate later when the chances of success were more certain. He was in a good position for such a program.

GOVERNOR OF OHIO.

But aside from all such considerations he was naturally ambitious to make a good Governor, and such he was. His administration was conducted on a high plane, and in all respects he showed himself a capable and efficient Executive. Throughout his two terms the slavery question, through repeated Fugitive Slave Law cases, was almost constantly occupying public attention. As Chief Executive of the State he now had an official responsibility for the due execution of the laws and the process of the Courts, and had great difficulty to meet the requirements of public sentiment and avoid a conflict with national authority. While in some instances severely criticized he appears with respect to all these delicate and troublesome controversies to have fairly and faithfully performed his duty. At any rate when he retired from his office in January, 1860, his party was greatly strengthened, and he had gained in general estimation as a man of pronounced convictions, honorable purposes and high qualifications for the public service. This was emphasized by a re-election to the Senate for the term commencing March 4th, 1861.

Thus it came to pass that in 1860 he ranked officially and personally, and deservedly so, with the foremost men of the

Nation. He seemed to have just and superior claims upon his party for its highest honor, and with a frankness amounting almost to immodesty—he set about securing it.

PRESIDENTIAL CANDIDATE 1860.

He had friends in all sections of the country, and he called upon them to advocate and advance his cause. He appeared to think only Seward and Bates formidable rivals, and easily satisfied himself that his claims were superior to theirs, but his friends in different parts of the country, especially in his own State, which seems to have had factional divisions and differences then as well as in later years, soon found that while all acknowledged his abilities, general qualifications and high personal character, yet there was a strong feeling in many quarters of distrust as to his views on the tariff and other questions that Republicans deemed of vital importance. This was due not so much to any statements he had made on these subjects, for he had never talked or written very much except about slavery, as to his oft repeated insistence and reiterated declarations from time to time preceding the organization of the Republican Party, that he was a Democrat, and that he adhered to all the principles of that party, except those with respect to slavery.

In Ohio there was added a lingering resentment among many of the old Whig leaders for his apparently vacillating course as a party man, and especially for his combination with the Democrats to secure his election to the Senate in 1849.

Some of his friends were frank enough to tell him that his chances were not promising, but he listened more to those who told him what he wanted to hear, and, notwithstanding a divided delegation from his own State, and but few delegates from other States who favored him as their first choice, he industriously and optimistically continued his canvass until the Convention met, and, giving him only forty-nine votes, dashed his hopes to the ground by the nomination of Abraham Lincoln.

Much fault has been found with him for the manner in which he personally conducted his campaign for this nomina-

tion. He seems to have proceeded on the theory that "if he wanted the office he should ask for it," and to have not only asked but also in many instances to have insisted upon his right to support.

His correspondence teems with an array of his claims, and with arguments in support of them, and with advantageous comparisons of them with the claims of others, and with directions and suggestions to his friends how to advance his interests.

It is to be regretted that a man of such lofty character, such high ability, and such long experience with men and public affairs, could have shown so little regard for propriety with respect to such a matter.

The small vote received in the Convention was probably due in some degree at least to the offense he gave in this way, for the sturdy, hard-headed men of that heroic time naturally disliked such self-seeking with respect to an office, the duties and responsibilities of which were so grave that any man might well hesitate to assume them even when invited to do so.

In all other respects his canvass was free from criticism. It was honest; there was no trickery attempted in connection with it—no promises were given, no bargains were made, no money was used. When it was over he had nothing to regret except defeat, and he took that gracefully. He gave Mr. Lincoln hearty support, and was undoubtedly truly rejoiced by his election, for he saw in it the triumph of the principles for which he had been all his life contending, and the beginning of the end of slavery in the States as well as elsewhere.

IN THE CABINET.

Mr. Lincoln, at the time of his election, was underestimated by almost everybody, except those whom he was wont to call the plain, common people. They seemed to know him and his greatness by intuition, as it were. They had confidence in his sound common sense, and loved him for his homely manners and simple, straightforward methods. They felt from the day of his nomination that he would be elected; and

when he was elected, and the clouds began to gather, and one State after another seceded, there never came an hour when they did not implicitly rely on him to safely pilot them through whatever storms might come. He had their confidence from the first and he held it to the last. They never wavered either in their devotion to his leadership, or in their faith that he would eventually save the Union.

From the very beginning they gave him also his rightful place as the real leader, who outranked all his associates in public life, not only because he was President, but also, and more particularly, because of his natural endowments and qualities of mind and heart.

But it was different with some of the leaders. Many of them were slow to acquire a just conception of his character and abilities. They never thought of him seriously in connection with the Presidency until he was practically nominated, and they did not think of him then, except as a sort of accidental compromise, who was not well qualified for the position. They regarded him as lacking not only the culture and refinement, but also the practical experience with public affairs that was essential to their successful administration.

He came to the front so suddenly and unexpectedly that he had gone ahead of them and had been named by his party for its leader before they realized that they were being supplanted. His administration was organized and fairly under way before they began to recognize their true relation to him.

This was particularly true of Seward and Chase, who had been the chief, and as they long thought, almost the exclusive rivals, for the honors of party leadership.

Both were invited to take seats in the Cabinet, and each accepted with the idea that, in addition to his own department, he would be expected to bear, in large degree, the burdens of all the other departments. Each seemed to think the country would look to him rather than to Mr. Lincoln for the shaping of the policies to be pursued. There was some excuse for this in the fact that each had his ardent

friends and admirers who encouraged the idea, and because some of the leading newspapers seemed to think that Lincoln had called them into his counsels from consciousness of his deficiencies, and in recognition of their superior fitness for the work he had been called to perform.

This thought—of the broader and more important duty of supervising the whole administration—seems for a time to have so occupied Chase's mind, that he did not at first realize, and perhaps never fully, that his legitimate field at the head of the Treasury Department was full of duties of the highest importance and the amplest opportunities for conspicuous service.

During all the time he was a member of the Cabinet, but particularly during the first months, he gave much volunteer attention to duties outside his department, particularly to those relating to the War Department; the organization of the Army and the planning and conducting of campaigns. He was an inveterate letter writer, and was constantly giving advice and making suggestions to apparently every one who would listen, including commanding officers in the field.

Gradually, however, he came to more clearly understand that his own duties were enough, if properly looked after, to tax him to the utmost, and in time he came also to realize that Mr. Lincoln was the head of his own Administration, and the final arbiter of all controverted questions.

By reason of this disposition and habit his work in the Cabinet was not so good as it might have been if he had concentrated his efforts in his own department and had been properly alive from the outset to the seriousness of the situation he was called upon to meet. His fault in this latter respect was, however, common to all, for the war in its magnitude and duration exceeded all expectations, and its demands multiplied with such frightful rapidity as to upset all calculations, thus making it well-nigh impossible for him to keep pace with its growing requirements, and secure from Congress the authority and help necessary to enable him to carry out such plans as he formulated; and yet, notwithstanding all this, it would be difficult to exaggerate what he accomplished.

He found his department disorganized, but in the midst of the excitements of the hour and the exacting duties of a more important nature that fell upon him, he thoroughly reorganized it, introducing many reforms that greatly increased its efficiency. He found the Government without funds or credit, and without adequate revenues to meet ordinary expenditures in time of peace, but he surmounted all such obstacles and made it successfully respond to the exigencies of war.

With the necessity suddenly precipitated of providing for great Armies and Navies, and equipping and maintaining them, he would have had a hard task under the most favorable circumstances, but it was increased almost beyond the power of description by an empty treasury, a startling deficit, an impaired credit, an inadequate revenue, and eleven States in rebellion, with tens of thousands of copperhead sympathizers in every loyal State criticising and actively opposing in every way, short of overt acts of treason, every step he took or tried to take.

He had all the help that able men in Congress and outside could give him by advice, and the suggestion of plans and methods, and ways and means, but after all he was the responsible official, whose duty it was to hear all, weigh all, and decide which plan of all the many suggested should be adopted, and then take upon himself the responsibility of recommending it and advocating it before the country and before the Congress, and if the necessary authority could be secured, executing it.

His difficulties were further increased by the fact that the Republican Party was then new to power, and its members in public life had not yet learned to work in harmony. Many of them were strong and aggressive men who were slow to adopt the views of others with which they did not fully coincide.

In consequence, his recommendations were subjected to the keenest scrutiny and criticism from party associates, as well as opponents, and not infrequently they were materially modified or changed before they received statutory sanction, and in some instances entirely rejected.

In all these experiences his high personal character and well-recognized ability were of incalculable value to him and his country. Whatever else might be said, nobody ever questioned the integrity of his purpose, the probity of his action, or the sincerity of his arguments.

While in the light of subsequent events it is seen that much that he did might have been done better, yet when the circumstances and the lack of light and precedent under which he acted are fairly measured, it is almost incredible that he did so well.

When we recall that great conflict we are apt to think only of its "pomp and circumstance"—of the deeds of heroism and daring—of the Army and the Navy—of the flying flags and the marching columns—of the services and sacrifices of those who fought and died—forgetting that less fascinating but indispensable service, and the noble men who rendered it, of supplying "the sinews of war," without which all else would have been in vain.

His labors in this behalf were incessant and herculean. On this occasion details are impossible. Suffice it to say that by every kind of taxation that could be lawfully devised he swelled the revenues to the full limit at which it was thought such burdens could be borne, and by every kind of security, certificates, notes and obligations that he could issue and sell or in any way use, he drew advance drafts upon the Nation's resources.

He met with many disappointments and discouragements, but he unflaggingly persevered, and finally succeeded, approximately, to the full measure that success was possible.

There were numerous transactions that might well be mentioned, because of the illustration they afford of the services he rendered, the difficulties he encountered, and of the kind of labor and effort he was constantly putting forth with Members of Congress, bankers, editors and others to advance and uphold his views, develop and educate public sentiment, and secure needed legislation and support; but all are necessarily passed over, that some mention may be made of two subjects, with which he was so identified that even the

briefest sketch of his public services should include some special reference to them.

They were the issue of legal tender notes, hereinafter discussed in connection with the legal tender cases, and the establishment of the National Banking System, involving, as it did, the extinction of State Banks of issue.

THE NATIONAL BANKING SYSTEM.

The establishment of a uniform National Banking System was, like most great measures, of gradual development.

It was much discussed and many minds contributed to the working out of the details, but Chase seems to have a pretty clear claim to its general authorship.

Upon him more directly than anybody else was impressed the necessity for some kind of reform in that respect, for while each citizen was experiencing difficulty in his dealings with individual banks he was compelled to deal with practically all of them, and, therefore, felt, in a consolidated form, the combined disadvantages that others suffered in detail.

In view of what we now enjoy, and the ease with which, looking backward, it appears that it should have been brought about, it seems incredible that an intelligent people should have so long suffered the inconveniences of the old system.

It can be accounted for only from the fact that for the Government in a general way, and for the people in a commercial and general business sense, that was the day of small things, and it was tolerated because they were accustomed to it, and because there was a natural aversion, especially on the part of the banks, to making radical changes that were necessarily in some degree of an experimental character.

But finally there came a precipitating cause, and the contest was inaugurated to substitute something better. The case was a plain one, but the resistance was stubborn.

Aside from the universal and almost unbearable inconveniences of doing business with a currency that had no uniformity of issue, appearance or value, and which had no proper safeguards against counterfeits and forgeries, was

the fact that it was not possible for such a discredited and unsatisfactory system to render the Government much substantial help in placing its loans or in conducting any of its important fiscal transactions.

Chase saw clearly, and from the first, that such a system could not co-exist with a uniform national system such as he contemplated, and that the existing State institutions would not surrender their charters, and take new ones under an Act of Congress, unless they were offered more substantial advantages than the Government should be required to give, or instead were deprived of the privilege of issuing their own notes, and that the best way to solve the problem was to tax their issues out of existence.

It was a hard matter to bring others to agree with him. The opposing banks commanded in the aggregate a tremendous influence, and with the aid of doubting Congressmen and newspapers they long delayed, and finally so crippled the first Act that was passed, that it failed to provide an acceptable and successful plan largely because it left the State issues untouched.

It continued so until the law was so amended as to embrace practically all the recommendations Chase had made and insisted upon, including a tax of ten per cent. on the issues of State banks. This did not happen until he had quit the Treasury Department, but it was his plan and his work consummated, that gave us freedom from the worst banking system that could be well imagined, and substituted therefor one of the best any country has ever enjoyed. It was a work of high character and of enduring benefit to the whole country. It was the crowning act of his administration of the Treasury Department, if not of his whole life, and, coupled with his other successes, entitles him to rank, after Hamilton, who has had no equal, with Gallatin and Sherman and the other great Secretaries who have held that high office.

RELATIONS TO MR. LINCOLN.

It was unfortunate for his influence then and his reputation now that at times he showed less satisfaction with his position and exhibited less cordial good-will in his relations

to Mr. Lincoln than he should. Personal disappointment was probably the chief cause. From his first appearance in public life he was talked about for the Presidency, and almost from the beginning he talked about and for himself in that connection. Barring the indelicacy manifested, there was no impropriety in such talk until after he accepted a seat in the Cabinet. It was different after that, for while there was all the time more or less opposition cropping out to the renomination of Mr. Lincoln, yet there was never at any time enough to justify a member of his political household, who had been part of his administration and policies, in the encouragement of that opposition, particularly for his own benefit. That Chase was a passive candidate during all the time he was in the Cabinet and a good part of the time an active candidate, can not be doubted. His many letters and diary entries show this; not so much by his open advocacy of his claims as by criticisms of Mr. Lincoln and his manner of conducting the public business and the general encouragement he was giving and evidently intending to give to the opposition sentiment.

He may not have realized fully the character of record he was making in this respect, for he was no doubt somewhat blinded by the fact that he never could quite outgrow the idea that Lincoln did not deserve to be put ahead of him in 1860, and that the country would surely sometime learn its mistake and right the wrong. In addition he had a conceit that he was of greater importance than he was getting credit for at the hands of the President, and that when he and the President differed about anything in his department, the President should yield, as he always did, except in a few instances when his sense of duty and responsibility prevented. At such times he was especially liable to say and do peevish and annoying things. On a number of such occasions he went so far as to tender his resignation, accompanied each time with a letter expressing a deep sense of humility but with an air of injured innocence that he no doubt keenly felt. Notwithstanding the trial it must have been for Mr. Lincoln to do so, he, each time, with singular patience, that only the good of his country could have prompted, not only refused

acceptance, but apparently placed himself under renewed obligations by insisting that he should remain at his post.

Naturally this was calculated to cause Chase to more and more regard himself as indispensable, until finally, June 30, 1864, on account of new differences connected with the appointment of an Assistant United States Treasurer at New York, he made a mistake of tendering his resignation once too often. This time Mr. Lincoln promptly, and to Mr. Chase's great surprise and chagrin, accepted it and clinched the matter by immediately appointing his successor.

He was thus suddenly left in a pitiable plight so far as his personal political fortunes were concerned, and but for the uncommon generosity of Mr. Lincoln, he would have so remained.

Mr. Lincoln had been renominated and the victories of Grant and Sherman were every day strengthening his party and his chances of election.

All thoughtful men could see that the end of the war could not be much longer deferred and that, with victory assured and Mr. Lincoln re-elected, there was renewed strength and continuance in power ahead for the Republican Party. It was a bad time for a man who had sustained the relations he had to the party, and the war, and the administration, to drop out of the ranks and get out of touch with events; but there he was, "outside the breastworks," and nobody to blame but himself.

It was a hard fate that seemed to have befallen him; and such it would have been if almost anybody but Mr. Lincoln had been President, for most men would have left him helpless in his self-imposed humiliation. But Mr. Lincoln was a most remarkable man. He was enough like other men to enjoy, no doubt, the discomfiture Chase had brought on himself, but enough unlike other men to magnanimously overlook his weaknesses and offenses when public duty so required.

APPOINTED CHIEF JUSTICE.

Accordingly, remembering only his long and faithful services and his high general and special qualifications for the place, he made him Chief Justice.

From the date of his resignation until December, when he was appointed, were probably his bitterest days.

He had nothing to do and no prospect. He made an effort, or at least his friends did, to secure his nomination for Congress from his old Cincinnati District, but so signally failed as to give painful evidence that he was not only out of office and out of power, but also out of favor. He was almost out of hope when Chief Justice Taney died. He was conscious that he had no claim on Mr. Lincoln for that or any other place, not alone because he had petulantly deserted him at a critical moment, but also and more particularly because in his vexation of spirit he had said some very unkind things of him, but he did not hesitate to allow his friends to urge him for that high honor, and, notwithstanding many protests, Mr. Lincoln gave it to him.

It would be hard to recall an instance of greater magnanimity than was thus shown by Mr. Lincoln. It was magnanimous because, while in most respects Mr. Chase's qualifications for the position were high, they were not of such exceptional character as to single him out above all other men for the place; certainly not if we consider only his experience at the bar, for while the first six years of his life in Cincinnati were devoted to the practice of his profession, yet, like the same period with other beginners, they were not very busy years. He had no exceptional successes. His progress was satisfactory and probably all that should have been expected, but there was nothing extraordinary to forecast for him the great honor of the Chief Justiceship.

During the following thirteen years, until he was elected to the Senate, his time was so occupied with political demands that he did not have much opportunity for professional work, and what time he did devote to his law practice was taken up very largely with Fugitive Slave Law cases, aside from which there is no record of any case or employment that he had during all those nineteen years, from 1830, when he located in Cincinnati, until 1849, when he was elected to the Senate, that was of anything more than passing importance. During all that time he probably never had any single employ-

ment of sufficient importance to bring him a fee of so much as \$1,000.

It is probable that in all that time he never had a patent case, or an admiralty case, or any occasion to make any study whatever of international law, and yet at that point virtually ended not only his career as a practicing lawyer, but also his study of the science of the law except as an incident of his public services.

During the next six years—until 1855—he was a member of the Senate, and devoted all his time to his public duties and to public questions and affairs. He was next, for four years, Governor of Ohio, and then came the national campaign of 1860, the election of Mr. Lincoln and the Secretaryship in his Cabinet, which continued until his resignation shortly before he was appointed Chief Justice.

And yet he was, all things considered, probably the best qualified of all who were mentioned for the place. His limited experience at the bar was not without precedents. Neither Jay nor Marshall had any very considerable experience of that character.

Both of them, like Chase, were prepared for their great work more by their public services and studies as statesmen, than by the general study of the law and the trial of cases in the courts. It was much the same with Taney. He had a larger experience as a practitioner, and was Attorney General, but his appointment was due more to his general public services than his professional achievements, although they were highly creditable and his standing as a lawyer was good.

Jay was intimately identified with the formative stages of our governmental institutions, and in that way was familiar from their very origin with the public questions it was thought might arise for decision; and Marshall, a soldier of the Revolution and a careful student of the great purposes and results of that struggle, was thereby equipped for not only his distinguished political career, but also for the great work for which the American people owe him a debt of everlasting gratitude, of so interpreting the Constitution as to breathe into it, with the doctrine of implied powers, that life, flexi-

bility and adaptability to all our exigencies and requirements, that have made it, not only a veritable sheet anchor of safety for us, but also the marvel of the statesmen of the world.

With Chase, as with his illustrious predecessors, it was his long, varied and important public services rather than his professional labors that prepared him for the Chief Justiceship and secured him the appointment. They were of a character that broadened his views by compelling a study of the Constitution and the foundation principles of our Government in connection with their practical application.

Mr. Lincoln not only understood and appreciated this, but he foresaw, and no doubt had much anxious concern on that account, that, after the restoration of peace, all the great transactions and achievements of his Administration would have to run the gauntlet of the courts. The abolition of slavery, the status of the freedmen, the status of the seceding States, the status of their inhabitants—the leaders who had brought about the war, and the masses of the people who had simply followed them, the confiscation of property, all the great war measures that Congress had enacted, including the Legal Tender Acts, he knew must in the order of events sooner or later come before the Supreme Court for final adjudication.

It was natural to conclude that no man was so well qualified to deal intelligently and satisfactorily with these questions as he who, in addition to having good general qualifications, had been a capable and responsible participator in all that gave rise to those questions.

There were many other great lawyers, but there was no other lawyer of equal ability who had sustained such a relation to these subjects.

Mr. Lincoln had a right to expect that with Chase Chief Justice the fruits of the war, in so far as he might have occasion to deal with them, would be secure, and this doubtless turned the scales in his favor.

In large measure he met every just and reasonable expectation. In so far as he failed to do so, it was generally

charged, whether rightfully or not, to his ambition to be President, which he should have put away forever on his accession to the bench, but which he appears to have indulged until his very last days.

This is particularly true of his failure to bring Jefferson Davis to trial, and with respect to his rulings in the Impeachment of Andrew Johnson, and his opinions in the Legal Tender cases.

Most men are now agreed that he acted wisely as to Davis, and that he ruled honestly and in most cases correctly on the trial of Johnson.

THE LEGAL TENDER CLAUSE.

As to the Legal Tender cases he was at the time and has been ever since much censured, aside from the merits of the controversy, on the ground that he tried to undo on the bench what he did, or at least was largely responsible for, as Secretary. No complete defense against this charge can be made, but the case against him is not so bad as generally represented, for, while finally assenting to such legislation, and from time to time, as occasion required, availing himself of its provisions, he was at first opposed to the step on the ground of policy and from doubt as to the power, and at last reluctantly yielded his objections rather than his opinions, only when the necessities of the Government seemed to imperatively so demand, and when Congress had fully determined to resort to the measure anyhow.

For him to have longer opposed would have been futile to prevent it, and could not have had any other effect than to discredit the notes when issued, breed discord, and put him at cross purposes with men, as competent to judge as he, with whom it was his duty to co-operate in every way he could to accomplish the great purpose all alike had in view of preserving the Union.

The situation was so unlike anything with which we are today familiar, that it is not easy to recall it.

Instead of the annual revenues of the Government aggregating the abundant and almost incomprehensible sum of

seven hundred millions of dollars, as they do today, they amounted then from all sources to less than fifty millions of dollars.

Instead of two per cent. bonds selling readily in wholesale quantities, as they do today at a premium, six per cent. bonds were sold only with difficulty, and in dribbling amounts at a ruinous discount.

In lieu of a national paper currency, good everywhere as the gold itself, we had only an inadequate supply of notes of uncertain and varying value, subject to no regulation or provision for their redemption in gold, except such as was imperfectly provided by the different States.

Few saw and appreciated until the second year of the war in what a gigantic struggle we were involved, and how stupendous must be the financial operations and provisions of the Government to meet its requirements.

For this reason no comprehensive or well-considered plans were adopted at the start, as foresight of what was coming would have suggested, but on the contrary mere temporary expedients, such as the sale of bonds in comparatively small amounts, and to run for short periods, demand loans, interest and non-interest bearing Treasury certificates and notes, demand notes, and whatever form of obligation could be utilized for the time being were resorted to, and relied upon to tide over what it was hoped and believed would be, although a most severe, yet only a temporary emergency.

As the war progressed and we met with reverses in the field, that indicated it would be prolonged, specie payments were suspended, and the national credit became more and more strained and impaired.

In consequence it became practically impossible to longer raise by such methods the necessary funds with which to conduct the Government and prosecute the war, or even to transact satisfactorily the private business of the country.

The point was finally reached where the people must come to the financial help of the Treasury, or the Union must perish.

Chase saw as well as others that the law of the case was Necessity, but he did not yield without an effort to have

attached as a condition, provision for a uniform National Banking System. The condition was not accepted, but was provided for later, and long before the Legal Tender cases arose.

Whatever else may be said about the legal tender clause, it is a fact of history that the effect for good on the Union cause was instantaneous and immeasurable. It was a forced loan from the people; they gladly made it. If it was a hardship on anybody, it was not complained of by any friend of the Union. It gave confidence and imparted courage, and from that moment success was assured, not only for the Union cause, but for everybody connected with it, and especially for Chase himself, for without it his administration of the Treasury Department would have been a dismal and mortifying failure.

Such a measure, arising from such a necessity, and accomplishing such results, was as sacred as the cause it subserved, and, aside from the wholesale disasters involved, it never should have been called in question by anybody, especially not by anyone who had the slightest responsibility for its enactment, and least of all by a personal or official beneficiary.

It is both impossible and unnecessary, if not inappropriate, to here discuss the legal propositions involved in the legal tender cases, but, on the other hand, it is both appropriate and essential to the completeness of these remarks to speak of Chief Justice Chase's attitude with respect to them.

No one can make a better defense for him than he made for himself.

In *Hepburn v. Griswold*, anticipating the criticisms he knew must follow his decision that the legal tender clause was unconstitutional as to debts previously contracted, he said, manifestly by way of attempted personal justification:

"It is not surprising that amid the tumult of the late Civil War, and under the influence of apprehensions for the safety of the Republic almost universal, different views, never before entertained by American statesmen or jurists, were adopted by many. The time was not favorable to considerate reflection upon the constitutional limits of legislative or executive

authority. If power was assumed from patriotic motives, the assumption found ready justification in patriotic hearts. Many who doubted yielded their doubts; many who did not doubt were silent. Some who were strongly averse to making Government notes a legal tender felt themselves constrained to acquiesce in the views of the advocates of the measure. Not a few who then insisted upon its necessity, or acquiesced in that view, have, since the return of peace, and under the influence of the calmer time, reconsidered their conclusions, and now concur in those which we have just announced. These conclusions seem to us to be fully sanctioned by the letter and spirit of the Constitution."

In the Legal Tender cases he amplified this somewhat, but without adding to its strength.

His opinions in these cases were in dignified style, and, from his point of view, were very able; but there was then and still is, and perhaps always will be much difference of opinion as to their merit.

In all other respects his work as Chief Justice is now universally considered highly creditable—some of it particularly so—especially his opinion in *Texas v. White*, which he regarded with great pride and satisfaction as a sort of culminating fruit of his life's labors. His opinions were usually brief and always clear and strong. They cover almost every phase of the litigation growing out of the Civil War and the reconstruction acts that followed, and all the decisions of the court, while he presided, remain unquestioned, except, inferentially, the constitutionality of the income tax.

He died May 7, 1873, in the sixty-sixth year of his age, after only eight years of service on the bench; but they were years of great anxiety to the American people, for, during all that time, the country's destiny was in a large measure in the hands of the Supreme Court. On its decisions depended the issues of the war—whether to be upheld and made secure or overthrown and brought to naught. The court was equal to all requirements and did its part so splendidly and brilliantly of the great work of regeneration and preservation that Chase and his associates deserve to stand—and do—in

public esteem and gratitude next after Marshall and his associates. The one dealt with the construction of our Government, the other with its reconstruction. The labors of both were vital.

If he had been content to devote himself to his judicial work exclusively, he would have been spared much that was disagreeable and his fame would have been brighter than it is.

All his life, until his last two years, he had robust health, unlimited energy and an almost uncontrollable disposition to participate in the general conduct of public affairs.

In consequence, while Chief Justice he was, in what was regarded as a sort of intermeddling way, constantly giving attention to questions that belonged to Congress and other departments of Government, and was from time to time freely offering advice and making suggestions as to legislative enactments and governmental policies; but, more unfortunately still, he was all the while listening to the suggestions of unwise friends and mere flatterers about the Presidency. Much work was done for him with his knowledge and approval to secure the Republican nomination in 1868, but early in that year, seeing there was an irresistible sentiment in favor of General Grant, he withdrew himself from the race. If he had remained out there would have been but little criticism, but he was scarcely out of the Republican race until he was entered for the Democratic. While the impeachment trial of President Johnson was yet in progress he signified a willingness to become the Democratic candidate, and set forth in letters to his friends that inasmuch as the slavery questions had all been settled, there was nothing in his political beliefs inconsistent with the principles of Democracy in which he had always been a believer. For a time there seemed strong probability that he would be the Democratic nominee. But it is familiar history that before his name could be presented the Convention was stampeded to Governor Seymour. Naturally there were charges that he was influenced, on account of his Presidential candidacy, by political considerations, and in this way he was shorn of much of the dignity, confidence and influence that rightfully

belonged to him in his high office. He suffered in this way, not only as Chief Justice, but also as a man. This is especially true of his candidacy in 1868 for the nomination first by the one party and then by the other, for at that time there was such a radical difference between the parties, and so much bitterness of feeling, that it was incomprehensible to the average mind how any honorable man could so lightly and with such apparent equal satisfaction to himself, belong to first the one and then the other, and with like zeal seek, or at least be willing to accept, the honors of both.

The explanation is in the fact that it was the weakness of a strong man. He was so conscious of his mental powers and of his qualifications by reason of his long public service, to make a capable and efficient Chief Magistrate, that it was easy for him to think his claims for such recognition better than those of others; especially others who had been differently trained, as Grant had been, and, therefore, to believe that his friends were right in their judgment that he was, for just reasons the people's choice, and that it was his duty to his country, as well as to them, to become their candidate.

With all his faculties for measures he had but little for men. He was himself so simple-minded, truthful and straightforward in his dealings with others that he seemed incapable of understanding how untruthful and deceitful others were capable of being in their dealings with him, especially if their pretensions were in accord with his own views and desires.

As time passes these features of his career will fade out of sight and be forgotten. Already he has taken his proper place in history and in the appreciation of the American people as the great figure he really was—a strong, massive, patriotic, fearless and controlling character in the settlement of the mighty questions that shook to their foundations the institutions of our Government. He will be remembered also for the purity of his life, for his domestic virtues, for his deeply religious nature, ever depending on Divine help, and for that love and zeal for humanity that made him brave social ostracism and sacrifice, if necessary, all chance of

personal political preferment that he might champion the cause of the slave and break the power that held him in fetters. In the light of true history the consistency of his conduct will not be determined by the record of his party affiliations, but by the constancy of his devotion to the cause that filled his heart and dominated all his political actions. Measured by that test, few men have run a straighter course or done more to merit a high place in the esteem of their countrymen.

ADDRESS OF HON. J. B. FORAKER

TO THE CONSTITUTIONAL CONVENTION OF OHIO,
COLUMBUS, MARCH 14, 1912.

Mr. President and Gentlemen of the Convention:—I thank you for the invitation that has brought me here, although I fear I may not be able to greatly interest or help you.

I did not feel at liberty to decline to address you on that or any other account, because the work in which you are engaged is one of such high dignity and such far-reaching importance and consequence that all your requests should be regarded as commands.

In view of the long time you have been studying the subjects you have under consideration and after the many addresses to which you have listened, I do not hope to say anything new, but only to further elucidate, if that be possible, views with which you are already familiar.

Before I touch upon any controverted question, let me speak of your work as a whole.

WORK AS A WHOLE.

It is commonly and properly accounted of much higher dignity and importance than that which usually falls to the Legislature.

This is because it deals with fundamental principles that do not change, while the other deals with circumstances and conditions that are constantly changing. In framing an organic law you are governed by human nature and standards of morality that continue the same through all generations; that are the same today that they were when our Gov-

ernment was organized, when the common law was established, in the days of the ancient governments of Rome and Greece and Egypt, and that will be the same so long as the world stands.

Of course, as we go along, living under a written Constitution, it may develop that some power has been omitted or inadequately provided for, or that some plan for executing some purpose can be improved, and in consequence an amendment may be necessary, but if the form of government and the general distribution of powers be satisfactory, there will be little necessity to make changes or additions.

In the century and a quarter we have lived under the Federal Constitution we have found it necessary to make only fifteen amendments, and ten of these were submitted to the States for ratification almost coterminously with the submission of the Constitution itself. In other words, in more than a hundred years we have made only five amendments to the Constitution of the United States, and three of these were made necessary by the Civil War.

When our fathers framed that instrument they had never heard of steamboats, or railroads, or electric motive power, or of any one of a thousand other things of which we have knowledge and are constantly making use, and yet the work they did has been found capable of being adapted to and to provide for all the numerous changing conditions and relations of society that have resulted in consequence. It has not been necessary to strike out from or add to the instrument they framed a single word on any such account.

But while it has been necessary to make only this limited number of changes in our Constitution, it has been necessary for the legislative department of the Government to enact thousands of pages of statutory provisions, most of them made necessary by the ever-changing conditions that have marked the progress of the world.

This is practical proof of the weightiest character that in making an organic law we should confine ourselves as nearly as possible to that which is elementary, fundamental and unchanging, while the Legislature should be authorized to

deal with that which is inconstant. The one should deal with that which can always with a reasonable degree of certainty be foreseen, while the other must deal with that which it is impossible to foresee, and which can be dealt with intelligently only when it comes to pass. The one is intended to stand indefinitely; the other as occasion may require. Stating the same thing in another way, a Constitution should deal only with great principles and it should deal with them only in a broad way, while the Legislature, on the other hand, must attend always to details.

Such being the character and offices respectively of these two kinds of law, it follows that specific details are out of place in a Constitution, but imperatively necessary in a statute. The one confers power and regulates its use; the other prescribes duties and regulates human conduct.

Specifications as to how much power shall be conferred and in what particular manner and under what particular circumstances it shall be employed, weakens, hinders and often defeats altogether the purposes to be subserved.

But the greater and more specific the details in fixing a rule of conduct the more certain will be its observance.

BREVITY.

The men who framed the Constitution of the United States understood this distinction thoroughly and observed it carefully.

They aptly defined the purposes of their work, provided for the federation of the States, the character and powers of the national Government, its three departments, their respective authority and organization, including a system of elections for President and Vice President, Senators and Representatives in Congress, the appointment of Judges, their jurisdiction, tenure and impeachment; they provided for our foreign relations, for an Army and a Navy, and established a Treasury, with a revenue system to support it; they authorized all the legislation of different kinds that it has been found necessary to enact to govern the Indian tribes and regulate our domestic and foreign commerce, together

with all the steamboats, railroads, telegraph lines, express companies and every other kind of carrier or facility that ever has been or ever will be employed in connection therewith, and DID IT ALL IN A COMPASS OF SEVEN ARTICLES, CONSISTING OF AN AGGREGATE OF ONLY TWENTY-FOUR SHORT SECTIONS, EMBRACING ALL TOLD LESS THAN FORTY-FOUR HUNDRED WORDS. Some of our latest State Constitutions with more than 40,000 words are in painful contrast.

You may not be able to excel, but you can at least emulate their example.

LET US REASON TOGETHER.

You have many great questions to deal with, but I shall discuss only the Initiative, Referendum and Recall.

These are new questions that have broken upon us like a storm. They are of such commanding importance that I pass everything else by that I may speak of them the more fully; but first let me indicate if I can with what spirit I speak.

I have great confidence in all my fellow citizens. I believe most men want to do what is right—what will most promote the public welfare—and that, with only the rarest exceptions, all are patriotic enough to sacrifice bias, prejudice, ambitions, personal advantages and all unworthiness for the public good as freely as they would peril life itself for the national flag. All they need to know is what is right—what is best—what will give us the best results for all—the greatest good for the greatest number—make us the strongest and most respected—and knowing this, instantly that will be done.

The most impressive legislative scene I ever witnessed was presented when the United States Senate, having become satisfied that war with Spain was inevitable, put a measure on its passage, appropriating fifty millions of dollars to be immediately available for the national defense, and, without a word of discussion, debate or comment of any kind, ordered the call of the roll and voted unanimously in its support.

All party differences, all personal and political antagonisms of every kind were effaced and forgotten in the presence of the country's danger, and Republicans, Democrats,

and Populists, all alike remembered only that they were Americans.

And so it must be here in this body. The law governing your selection to be delegates to this Convention was purposely so framed as to make you free, in the discharge of your duties, from all kinds of extraneous obligations, and give you an eye single to the highest and best interests of our beloved Commonwealth.

It should not be doubted that you are imbued with the spirit it was intended you should have and that you are, therefore, open to argument, to reason, to persuasion. I shall strive in all I may say to show myself in full sympathy with you in that respect. In this spirit let us reason together.

Harsh words, bitter personalities, acrimonious imputations, do not bring men together, but force them farther and still farther apart.

Unless sincerity and mutual respect for honest differences hold sway this hour will be wasted.

Great waves of sentiment for reform or radical changes in established laws and conditions never start without some moving cause.

That cause may be all right, in which event the results will be for good; or it may be all wrong—or out of all proportion to the commotion it excites—or the wave may gather a volume and intensity that will make it more dangerous than the evil of which it is born.

In any of these events the results will not be helpful. They may not be ruinous, but they will not be beneficial.

It behooves us when such waves come to study them carefully, to ascertain the cause and then guide them aright if calculated for good, and to check, control and stop them if they threaten evil.

We have had many such experiences. Within the memory of all of us we have had the greenback wave, the free-silver wave, the sound-money wave, the anti-railroad wave, the temperance wave, the anti-trust wave, and many others, of more or less importance, that you will readily recall,—some, in the light of subsequent events, appear extremely unwise—others just the opposite, but some good came out of each of them.

Men differed about them—honestly differed—but finally, after conflict and contests and argument and discussion, reached acceptable results; then the storms passed by—the waves subsided, and our ship of state sailed on over smoother seas, only stronger for the buffetings to which it had been subjected.

So it is and will be with the wave that is upon us now. Men differ about it—honestly differ. Men who are conscientiously struggling for the same ultimate good see with different lights.

If rightly conducted all such contests not only clarify the situation, but they are educational—they make men nobler and stronger and thus we are all benefited. Differences are not, therefore, to be deplored. If rightly considered and adjusted, they usually prove blessings in disguise.

It is all according to God's Providence that we should be so tried and tested.

INITIATIVE AND REFERENDUM.

First now of the Initiative and Referendum. As abstract propositions they are old, but not familiar.

Not to go beyond our own history when the Constitution of the United States was framed it was submitted by the Convention that framed it to the people of the several States for ratification before it was put into operation. That was Referendum.

When the first Constitution of Ohio was adopted the Convention that framed it did not submit it to the people for ratification, but promulgated it and put it into operation without giving the people any opportunity to approve or disapprove.

That was not Referendum. Time developed imperfections and insufficiencies in that instrument, but this failure to submit it to the people for their approval was one of the causes in addition to others on account of which it was superseded by the Constitution of 1851.

The practice of submitting Constitutions and their amendments to the people for ratification and adoption has been generally observed in all the States of the Union.

In some of the States, even though their Constitutions did not provide for it, legislative measures of a local character have also been occasionally submitted to the people for approval before putting them into operation.

In the same way a form of the Initiative has been sometimes recognized in connection with local legislation without any special authority for it.

There are some judicial decisions on the subject.

With but little conflict the courts have held that where the Constitution of a State has vested all legislative power in the Legislature and is silent on the subject, both the Initiative and the Referendum may be exercised as to the legislation of municipalities and local subdivisions, but not as to general legislation affecting the whole State.

The foundation for the distinction is stated by Judge Cooley in the discussion of another subject, in his work on Constitutional Limitations, as follows:

“ . . . The Legislature can not delegate its power to make laws, but fundamental as this maxim is, it is so qualified by the customs of race and by other maxims which regard local government, that the right of the Legislature, in the entire absence of authorization or prohibition to create town and other inferior municipal organizations, and to confer upon them the powers of local government, and especially of local taxation and the police regulation, usual with such corporations, would always pass unchallenged. The Legislature in these cases is not regarded as delegating its authority, because the regulation of such local affairs as are commonly left to local boards and officers is not understood to belong properly to the State.”

It is not necessary, therefore, to change our Constitution to authorize both the Initiative and the Referendum as to local legislation; but it is necessary to change it to authorize the exercise of these rights by the electors of the whole State.

It is because of this holding of the courts that it was competent for our last Legislature to authorize the Initiative and the Referendum in municipalities; and competent for a pre-

ceding Legislature to enact the Rose County Local Option Law, because under it action is taken by counties upon the petition of a prescribed number of voters.

The same is true as to all the laws we have had subject to local votes, authorizing Municipal and Township Local Option, the location of county seats, the building of bridges, the making of local improvements, and doing many other things that might serve as illustrations to show that in various ways we have always had a species of Initiative and Referendum, although we have not heretofore commonly employed these names to designate such proceedings. Our experience in this respect should be of value to us now.

According to this experience where the electorate is not too large and where the question submitted is simple, and one affecting either the pocketbooks or the personal habits of the people, a good vote and an intelligent vote is usually secured; but when the number of voters is large, and the questions are complicated, or have reference to the community as a whole and nobody in particular, the vote is generally very light as compared with that cast for the candidates for office, voted for at the same time, and consequently the public expression so secured is correspondingly less satisfactory.

We have had the same experience with respect to constitutional amendments that have been submitted to be voted upon by all the electors of the State.

We should bear in mind, therefore, that if it be the purpose of the Initiative and the Referendum to secure an expression of the voters with respect to local legislation, we have all the power and authority now necessary for that purpose without changing our Constitution; and that, in the second place, we are likely to get the most satisfactory expressions only when the numbers to vote are smallest and the questions submitted are simplest; particularly is all this true when the questions submitted do not involve sumptuary legislation or affect individual property rights. When these features are involved there is always, as a rule, a large vote.

But what we are now called upon to consider is not the Initiative and Referendum as applied to local subdivisions

and to simple and distinct propositions of legislation; such as whether a community shall be wet or dry,—the court house shall be located at one place or another—a particular bridge shall be built or not built; but, whether or not we shall have general legislation affecting the whole State, to be submitted to all electors of the whole State; and not only general legislation, but the most complicated as well as the simplest kind of general legislation; and be compelled to accept or reject without privilege or power to debate or amend.

For the proposal, as you have formulated it, is that on the petition of a small percentage of the voters, any law enacted by the Legislature having general operation throughout the whole State, shall be submitted to the voters of the whole State for their approval before it shall be allowed to go into operation; and that on a like petition any bill that anybody may draft shall be submitted to the whole body of the voters of the State for approval and that securing a majority vote in its favor it shall become a law, even beyond the power of the Governor to veto it.

All concede that this involves a radical change in legislative methods, but the advocates of these propositions tell us that they do not involve an abandonment of representative government or any experiment—that they have been put into operation in Oregon, California, and a number of other States, and that they have been found effective for good results; that the movement was conceived and inaugurated to cure conditions of political bossism and corruption; that the people had lost control of their own Government, and in this way that control has been restored to them, and that no one should oppose these propositions unless he is afraid to trust the people, and that as wholesome results have been secured elsewhere, so, too, can they be secured here in Ohio.

WOULD ADD TO BURDENS OF LEGISLATION.

There are a number of objections that should be considered.

In the first place, it would increase the burden of elections, if not by increasing the number, at least, by increasing our duties and responsibilities.

With only a duty of choosing between candidates and platforms we have found elections such a disagreeable responsibility that we have wisely sought to minimize their number and simplify their character.

In this behalf only a few years ago we abolished our October elections and later consolidated elections of Congressmen and State officials so as to have all occur in even-numbered years and municipal and other local elections so as to have them occur in odd-numbered years.

If now in addition to candidates and platforms we are to be compelled to consider and vote on all kinds of local and State legislation every time we go to the ballot box, we shall find election day the busiest and most burdensome of all the year, since although the mere voting may be a small matter, yet the duty that will be placed upon us by this change will be onerous indeed.

The reading, study and labor attendant upon the general investigation and inquiry we must make to familiarize ourselves with the many measures we are likely to be required to pass judgment upon will be exacting beyond any experience we have ever had with elections. It has been said there will be a compensation in the education the people will get and the gratification that will come to them from a realizing sense of duty performed.

As to many people this may be in some measure true, but there will be a large percentage of the voters who will not appreciate the benefit thus received. It is too intangible to be an inducement to a large percentage who will always be so practical as to be more concerned about their own affairs than they are about those of the State.

It has also been suggested that there may be but little resort to these methods in actual experience; that the great value to the public is in the moral effect of the knowledge that such weapons are at hand.

There are two answers.

In the first place, if they are to be little used it is not important that we have them. "The game will not be worth the candle." In the second place, practical experience where

these measures have been adopted shows the contrary. In Oregon, where the Initiative and Referendum have been in operation some years, there has been a growing increase in the number of measures voters have been called upon to approve or disapprove at each State election.

There were only two such measures in 1904, the first year; eleven such measures in 1906; nineteen in 1908; while in 1910, thirty-two legislative measures were submitted under the Initiative and Referendum. In Oregon, the State prints and distributes these bills with explanations and arguments, limited to two hundred words, for and against each measure.

According to the proposal you have adopted these arguments are to be limited to three hundred words each.

In Oregon, in 1910, these bills and the explanations and arguments make a book of two hundred and eight pages. Each voter was expected to study carefully each bill and the argument for it, and the argument against it, in order to qualify himself to pass judgment upon it; and manifestly if he failed to do this, he was not qualified to vote intelligently.

If we should put similar measures into operation here and should make a proportionate use of them, our voting population being ten times greater than it is in Oregon, it would mean that we would at each State election be called upon to vote upon more than three hundred legislative measures, and in order to qualify ourselves to vote upon them intelligently, we would have to read more than three thousand pages of bills and arguments, since our arguments are each to be one hundred words longer than they are in Oregon; and that is more of that kind of literature than fifty per cent. of the people of the United States read in a lifetime. Most people might read that amount of fiction or history for pleasure, but they would not wade through such a mass of that kind of printed matter merely to learn how to vote. They would ordinarily rather vote in the dark or forego the privilege entirely.

But those who would not read at all would, perhaps, have less trouble than those who did. To those who would not

read it could not make any difference that the power of amendment is denied,—that the bills must be voted upon precisely as submitted,—“not a t crossed nor an i dotted.”

Every man knows who has ever had experience as a member of a parliamentary body that it is only through the power of amendment and the debate and discussion precipitated by objections that the weaknesses of bills as introduced are developed and corrected, and that without an opportunity for consideration in committee and discussion and amendment there, and on the floor of the body, it is usually impossible to reach conclusions acceptable to a majority of the membership with respect to a controverted proposition.

You do not need to go beyond your own experience for a conclusive illustration of the truth of this statement. Recall your experience with respect to the proposal for which a majority have voted with respect to the liquor question, and you will be reminded that it has been only through the employment of all the facilities of regular parliamentary procedure that you were able, finally, to reach a conclusion upon which a majority could unite; but you need not go beyond the very proposition I am discussing.

When the campaign was on, and for weeks after the Convention assembled, the members who favored the Initiative and Referendum probably did not realize that they would have trouble to agree upon a proposal acceptable to a majority of the membership; but, according to the press advices, it has been only through long, wearisome, patient, struggling endeavor and resort to every available parliamentary facility and procedure, including the much-abused caucus, that you have finally agreed in committee upon the proposal that has been reported. What you will do when the Convention acts remains to be seen.

EVASION OF RESPONSIBILITY.

Another objection, applicable to the Referendum, is that it has a tendency to induce legislators to evade their responsibility as to troublesome questions of legislation, a vote on which, either for or against, they desire, for any reason to avoid.

Again it is unnecessary to go beyond the experience of this body for support for this objection.

A few days ago in the report of your proceedings the newspapers carried the following:

"Many delegates here today predicted the adoption of the Woman's Suffrage proposal. Several delegates stated that they would not oppose the question on the floor, for the reason that they believed the electors would defeat it when submitted."

It is fundamental that every public official should act with respect to every measure he is called upon to consider, according to his conscientious conviction of duty. All so agree, and yet it is common knowledge that we do not always get this highest and best service when it is known that no matter what action may be taken, it is not final, but subject to review.

TWO LEGISLATURES.

A more serious objection is the fact that these proposed changes would provide for practically two Legislatures.

One composed of Representatives duly chosen who meet in an organized body and under the obligations of an oath of office discharge their duties according to parliamentary procedure.

The other an unorganized body of electors limited only by the total number in the State, who do not act under the responsibilities of an oath of office; who have no parliamentary procedure; who can not have the benefits of consideration by a committee, with a report therefrom; who can not amend or suggest amendments; who can not by objection and discussion and debate develop a necessity for amendments; who are largely dependent for information upon what is furnished them by the State, which would probably be greater in volume in a State like Ohio than the average voter would be able to read, let alone study and master, no matter how willing he might be to try to do so under fair circumstances.

It is not a question of trusting either the integrity or the intelligence of the people, but rather of trusting their patience and willingness to make the investigation and study necessary to enable them to act with wisdom.

We have had some experience as to what voters will do as to general proposals under ordinary circumstances. They have had a good deal of experience in Oregon.

This experience shows that on legislative propositions of a general character, not affecting personal habits or individual pocketbooks, the total vote cast ranges from about sixty to eighty per cent. of the total vote cast at the same election for candidates for office, indicating that in addition to those who may vote against measures because they do not know enough about them to be satisfied to vote for them, there must be a very large percentage of voters, who, for the same lack of information, do not vote at all.

According to newspaper reports you have been advised to favor a Short ballot. There is much to be said in favor of that suggestion. The chief reason for favoring a Short ballot is, however, that the voters, according to the gentlemen who advocate that reform, should not be required to study the qualifications and fitness of an undue number of candidates to be voted for at the same time; but it would seem inconsistent to argue that it is too much to require of the voter that he shall pass judgment on perhaps a dozen candidates at the same time, and yet, at the same time vote to approve or disapprove thirty or more, perhaps three hundred or more, legislative measures, all important, and all affecting the whole State, and most of them probably sufficiently complicated to cause lawyers to differ and courts to disagree as to how they should be construed.

Experience has shown that the voter is much more likely to study candidates than he is to study legislative propositions; especially when the legislative propositions do not concern his personal habits or his pocketbook; for the record shows that everywhere in this country where experience has been had, and everywhere in Switzerland, from which country we are borrowing these ideas, with the exceptions noted, the vote will always be from twenty to fifty per cent. greater upon individual candidates than on legislative propositions. Many voters lose interest in a ballot as soon as they get through with the human being, flesh and blood part of it.

In Switzerland the neglect of the elector to vote on legislative propositions, although presented on the same ticket with candidates for whom he voted, became so great that, finally, laws were passed, making it compulsory for him to also vote upon the legislative proposals. But the aggregate vote for and against measures has been no larger since than it was before. The non-voters now vote as the law requires, but they vote blanks, thereby demonstrating that, while you may compel the voter to go to the polls and cast a ballot, you can not compel him to vote for or against if he prefers not to do so; and that rather than vote for or against measures he does not understand, or take the trouble to learn about, he will "shoot in the air."

MINORITY RULE.

The result is that where a majority of all the votes cast at the election is not required to carry a measure, but only a majority of the votes cast for and against the proposition, it frequently occurs that a measure is adopted by a minority vote. This has happened so often that it is a just criticism to charge that the plan is well calculated, if not intended to enable a compact, well-organized minority to carry a proposition against an unorganized majority.

It has been stated that, as a rule, all men who believe in a single tax as advocated by Henry George, favor the Initiative and Referendum because of the possibility thus afforded of enacting a law of that character.

The statement has been repeatedly made in the public press, that prominent leaders of the single tax movement have said that their purpose in favoring the Initiative and the Referendum is to make more possible, through the compact organization of a minority, the enactment of the legislation they desire.

Without regard to what the fact may be as to that matter, it is not wise to favor measures calculated to give a minority control. That the majority shall rule is a basic principle of our institutions.

Many other objections might be made, but I shall mention only one more, probably the most serious of all.

We could survive all the evils that would likely result on account of the objections already mentioned, if they should be overruled and there were no others; for none of them would be vital in character, and in time we might and would find some way to correct evils that might arise; both those which are foreseen and those which are unforeseen; but this proposed change would be attended, I fear, with far more serious consequences than any yet pointed out.

REPRESENTATIVE GOVERNMENT.

We have a representative form of government; our fathers were of the opinion that in a country of such vast areas as we have, with a population of millions, soon to be multiplied to hundreds of millions, direct government by the people was impracticable and impossible. They, therefore, provided for a popular government to be conducted, not by the people directly acting in its conduct, but by representatives of the people so acting—representatives chosen by the people, because of their supposed character and qualifications for such service—all sworn to sustain the Constitution of the State, and the Nation and all the laws of the country.

When this form of government was adopted it was thought to be a long step forward in the science and progress of enlightened government. It was thought to solve the difficult problem of how the people could conduct a government of their own.

For more than a thousand years we apparently unanimously flattered ourselves that we had successfully solved that problem; that we had popular Government; that the people did control the Government. We believed with Lincoln that our Government was of the people, by the people and for the people.

The American people not only have believed through all this—more than a century of national life and experience—that they have had such a Government, but they have become attached to it, affectionately attached to it, because of the wonderful success they have achieved under it. This should at least admonish us not to make radical changes lightly or

inconsiderately, but only after careful examination and with an intelligent conception, if we can get it, of the consequences.

Surely we should know whether we are to take a step backward or forward; whether it is progress or retrogression that is offered. What then is it that we are asked to do?

We are told that it is not an abandonment of Representative Government, but only a restoration. This statement concedes that abandonment would be a fatal objection. It is, therefore, important to ascertain whether the statement be true.

To say that the people shall do directly what they have been doing by representatives is to simply say that as to the particular matters involved, they will have no representatives; and to say they will have no representatives in a given case, is to say that we have at least to that extent reached the end of Representative Government. And that is at least partial abandonment, and that is all that has been claimed. It is the entering wedge.

If Representative Government had been a failure, there might be a good excuse for what is proposed, for in such a contingency it would behoove us to make some kind of change; but Representative Government has not been a failure. On the contrary, it has been a triumphant success.

Under it there have been many abuses. Many men selected to office have disappointed their constituents. There have been many scandals to jar our confidence, but, all things considered, we can say without successful contradiction that our Government and our people have been freer from troubles of this character than any other in the world.

This is particularly true as to our own State of Ohio. From the day when in 1788 Civil Government for the Northwest Territory was inaugurated at Marietta down until this time the history of our State and its government has been one to excite our unqualified pride.

We have had only enough disappointment to emphasize the exceptionally high character and extraordinary efficiency of those who have represented us in public life.

They may have had insufferable troubles in Oregon and California and they probably did have. It may be they

could not find any other equally efficient way in which to remedy those troubles. I would not criticise the men who in those States were compelled to grapple with conditions we may not understand, and who doubtless with a patriotic and laudable purpose to restore and insure good government resorted to these methods; but, however, it may have been in those States, there has been no sufficient provocation for any such experiment in Ohio.

Moreover, with their smaller populations and their peculiar conditions, methods and systems may be practicable there that would not be with us. We have a vastly larger population, more varied interests, more business activities, and a restless, busy, intelligent people, who need all their time for their own affairs and, therefore, prefer that legislative measures shall be framed and dealt with by representatives, assembled in parliamentary bodies, and acting under official responsibility.

So much of our time is so necessarily taken up with elections and legislative matters that we prefer to curtail these duties rather than enlarge them. Only a few years ago public sentiment became so strong against annual sessions of our General Assembly that it forced the adoption of biennial sessions. Let us not now thoughtlessly or for some trivial cause or under some specious pretext fly to the other extreme and create another Legislature, of the character proposed, especially not until we have some better reason than that "it has worked well in Oregon."

Along with the Initiative and Referendum, the Recall has been put into operation in these other States, and has been proposed to this Convention. I understand there is not much likelihood of such a proposal being adopted, and that is fortunate. Fortunate, because most of our civil officers are elected only for the short term of two years. As to all such they are scarcely familiar with their duties until they must either retire or stand for re-election.

There is nothing in our experience to show that this, with the provisions we have for removal is not a sufficient safeguard.

It would be a burdensome and unnecessary multiplication of our duties to compel us, from time to time, to hold inter-

mediate elections at public expense to determine whether an official duly chosen shall be allowed to serve out the short term for which he has been elected, particularly so when we may otherwise provide as will presently be suggested.

JUDICIAL RECALL.

While their terms are longer there is more serious objection to the Recall when applied to the Judiciary.

Our Judges are not more sacred than other officials. They do not claim to be, nobody else claims that they are, but their services are far more important than those of any other class of officials; and it is important to us, rather than to them, that we should have in the manner in which they discharge these duties the highest possible efficiency. Our experience has demonstrated that our fathers were wise in making our three departments of government separate, independent and co-ordinate; particularly were they wise in making the Judicial Department separate and independent.

There never had been a judiciary, in any country under any government, before their time, independent as they are, not only to administer justice as to private controversies, but also to check all encroachments upon the fundamental law of the land.

That department was made separate and independent, not only because of the subserviency of the English Judges when they held office only by the favor of the King, but because it was realized that we must not only have impartial tribunals, for the adjudication of controversies between private litigants, but that, if our written Constitutions were to stand, there must be a power lodged somewhere to compel the observance of their limitations—a power that could check the encroachments of both the Congress and the Executive. Only a separate, distinct, independent department of unquestioned authority and power, beyond the control of either of the other departments, could be sufficiently independent and fearless to perform this high service. The Federal Constitution led the way in making this reform and all the older

States followed, not so much from compulsion as from choice. What has been the result? In neither State nor Nation have we had anything of which to make serious complaint, but only cause for sincere pride and congratulation.

But we are told that the experience has been different in other States, and that our experience may not be so satisfactory in the future, and that for such reason the Recall should be adopted, and be made to apply to Judges as well as to other civil officers.

All are agreed that there should be some way of removing officials from office, including Judges, on account of such offenses as are now made the subject of impeachment.

It is accordingly provided in the Federal Constitution that they should be subject to impeachment, and provided in a general way what the procedure should be.

With some variance as to the grounds, most of the States have adopted similar provisions.

In the Ohio Constitutions of 1802 and 1851, it was provided that they might be removed by impeachment for "misdemeanors in office."

We have had little occasion to consider the efficiency of this remedy, but it may be justly criticised as too cumbersome and not easily available.

Articles of Impeachment can be presented only by the House of Representatives, and they can be tried only by the Senate.

To set this machinery in motion would ordinarily be a considerable undertaking, even when the Senate and the House are in session; but the Legislature now holds only one regular session biennially, and that is rarely longer than three or four months. The result is that five-sixths of the time, or possibly twenty months out of twenty-four, impeachment proceedings are wholly impossible; and, during the short time they are available, the machinery is so unwieldy that only an extraordinary case would induce a resort to it; and then in most instances the time of the General Assembly might be better employed. For having only one session every two years the ordinary demands for legislation leave but little time to the Legislature while in session for anything else.

In consequence the remedy by impeachment as now provided would be found well-nigh no remedy at all, if we should have occasion to invoke it.

But this does not show a necessity for the Recall as proposed, but rather that we should make suitable provision in some other way for a simpler method of preferring charges and a more available tribunal before which to try them, with a less cumbersome proceeding according to which the trial should be conducted.

It is not within my province or privilege to formulate a proposal for your consideration, but I suggest that it might be made the duty of the Attorney-General to receive and examine charges against Judges and other public officials, now subject to impeachment, and if he shall find them sufficient in law, and that there is probable guilt, to put them into proper legal form and report them to the Governor with a recommendation that impeachment proceedings be had; in which case it shall be the duty of the Governor to summon an Impeachment Court, consisting of such number of members as he shall determine, not less than three nor more than fifteen, to be selected by him from Judges on the bench, and other citizens of the State, in such proportion as he may determine; which court shall be convened at a time and place to be designated by him, and then and there proceed to hear and determine upon the law and the evidence, the charges preferred—the Attorney-General representing the State, and the impeached official defending in person or by attorney. If charges be preferred against the Governor or the Attorney-General, the Chief Justice of the Supreme Court might be authorized to act in his stead.

All the details of such a proceeding should be left to the Legislature.

I am only suggesting that it is an easy matter to provide a tribunal that can be invoked at any time, with but little cost, to hear, in an orderly way, that will protect all rights involved, any charges that may be brought upon which there should be a trial; and that through the Attorney-General and the Governor there would be an assurance that no such

proceeding would be had on frivolous or trivial charges, or except upon lines that would protect the public and secure equity and justice to all concerned, with but slight expense and without annoying the entire electorate, concerning a matter for which ordinarily it has neither time nor disposition.

With a remedy so easily provided for whatever may be lacking in our present procedure, it does not seem wise to resort to the practically untried experiment of the Recall with all its expense, trouble and annoyance.

Certainly it is not necessary to call upon the 1,200,000 voters of Ohio to sit in judgment upon a charge against some one of our Judges that he has committed some kind of a "misdemeanor in office." Certainly it can be better done by a competent tribunal appointed for that purpose. Then why longer consider the Recall?

There is only one answer, and that is not a good one—for that answer is: Because the Recall is designedly broad enough, where it has been put into operation, to embrace within its scope other purposes than the ascertainment of truth and justice.

Under the Constitutions of all the older States the grounds for impeachment are specifically named; they consist of crimes, misdemeanors in office, oppressions in office, conduct involving moral turpitude, gross immorality, and other offenses of the same general character. But in Oregon, where they have instituted the Recall, no specific ground is necessary. The language of the statute being, referring to the petitioners who ask for the Recall, "They shall set forth in said petition the reasons for said demand"—*their* reasons—not reasons named in the Constitution or the laws, for there are nowhere in the laws of that State any limitations upon the number or the nature of the reasons the petitioners may assign. The test, therefore, becomes one of personal popularity, pure and simple, and it is so intended.

In consequence, if a Judge, by an unpopular decision, sets this machinery in motion against him, he is liable to lose both his office and his good name as a penalty, not for any wrong he has done, not for any error he has committed, not for any

violation or disregard of law, but, on the contrary, it may frequently happen, because he has ably and conscientiously done his duty under the law and according to the law he is sworn to uphold.

There can be but one purpose of thus broadening the method of calling Judges to account, and that is to take away from the judiciary that independence and that fearlessness so essential to the important place they are intended to fill in our form of government; to substitute dependence for independence; timidity for courage, with the inevitable result of the loss of that respect our Judges have always enjoyed.

It was to escape such possibilities that our judicial system was adopted, and our Judges were given the great powers they are authorized to exercise.

All the great statesmen of the formative stages of our republic, including not only the men who framed the Constitution, but those like Jefferson, Marshall and Webster, who put our Government into successful operation and developed its powers—the very men we revere most for their wise, unselfish, patriotic devotion to the great problem of American self-government, have recognized in the independence of our judiciary the very keystone of our national arch; and all have admonished us to jealously guard and preserve it.

To turn our backs upon what these men taught and upon our own experience, by adopting a method of calling Judges to account according to the unbridled whim of the requisite number of petitioners, would be to destroy that feature of our system that has made it most useful and inspired us with the greatest confidence that in the fiercest storms that may come it will prove our sheet anchor of safety. Let the Judge remain secure, therefore, in his great office from assault and molestation from any and every cause, except his own personal and official misconduct. And should he commit error in his rulings and decisions, it would be only to make a bad matter worse to appeal therefrom to the people themselves, sitting as a High Court of Review.

A court composed of the voters of the State, not acting under the obligations of an oath, and necessarily in large

part without many essential qualifications, would be a strange and unfit kind of tribunal to determine great constitutional questions, involving human rights, human liberty, human progress, and possibly, yes, surely, in time, involving the preservation also of our institutions.

Instead of seeking new and strange ways in which to get away from ancient landmarks, let us rather take renewed confidence in what our fathers gave us, and strive by improving, strengthening and fortifying, to go forward to an assured destiny, full of glory and honor for the Nation, and full of peace, happiness and prosperity for the State.

“THE BIRTH OF A NATION”

There have been many attempts to re-write and falsify the history of the Civil War and the reconstruction of the States that followed.

It has been charged that the moving picture show entitled “The Birth of a Nation” predicated upon and prompted by the writings of Mr. Thomas Dixon, is another effort of this character.

I have never seen it, and do not, therefore, have any personal knowledge on the subject.

It is claimed, however, that it undertakes to rescue the Ku Klux Klan from the unenviable place assigned them in history as midnight marauders and murderers (see page 284, Volume 1) by portraying them as patriotic citizens banded together for the protection of women and the doing of other things of praiseworthy character.

The pictures are said to be such striking works of art, and, to the uninformed, so entertaining that they unconsciously accept misrepresentations as facts of history.

Whatever the truth may be, the fact is undeniable that the Negro population have been deeply offended, and much bitterness of feeling on their part has been aroused.

It has been further charged by others who have witnessed the exhibition that it amounts to a reflection upon the memory and deeds of every soldier who wore the blue, and of every patriotic statesman who strove to restore the Union and make secure the fruits of the bloody struggle for its preservation.

If all that has been charged be true, the exhibition and its purposes are not new, except in form.

Speaking at Bellefontaine, July 27, 1907, I took occasion to answer an attack of this character that had just been made by Senator Tillman who was then making some speeches in Ohio. This seems an opportune time to reinforce the truth of history by reproducing what I then said about the adoption of

THE FOURTEENTH AND FIFTEENTH AMENDMENTS.

My remarks on that point were as follows:

I want to speak briefly now in answer to some utterances of Senator Tillman. He has been making a speech in Ohio. It was on the "Race Problem." This is his favorite topic. He is at his best when he talks on that subject, but his best is also his worst.

He is one of the frankest and one of the ablest men the South has ever produced. Every one is fond of him as a man, but his views on this subject are so extreme that but few of his Democratic colleagues in the Senate, if any of them, fully agree with him.

In his latest speech he is quoted as saying:

"If after the war the North had not in its passion and sectional hatred gone far beyond the bounds of reason, decency and righteousness, there would today be no race problem. . . .

"We resent and resist the doctrine of equality under the Fourteenth and Fifteenth Amendments. . . .

"You have done wrong. The North has done wrong. It can remedy the feeling by repealing the Fifteenth Amendment and letting the States control the franchise."

All the way through his discussion is in the nature of a protest against social equality. His whole argument proceeds upon the idea that the purpose of the Fourteenth and Fifteenth Amendments to the Constitution was to force social equality upon the white people of the South with their Negro neighbors. Nothing could be more wide of the mark. Nobody had any such purpose. Everybody understood then as now that social equality can not be forced upon anybody. There is no social equality among white people except as they may choose. It is the same with black people. Even more true it is as between black and white people.

The purpose of the Fourteenth and Fifteenth Amendments was to provide political equality; to put all citizens of the United States, whether white or black, rich or poor, upon the same plane, so far as the political rights of citizenship were concerned.

I shall not stop to debate with Senator Tillman about the doctrine of secession, nor as to whether the people of the South had a right to believe that they were right in advocating that doctrine and in plunging the nation into war to uphold it.

What I want to answer is his charge that in hatred and passion the Fourteenth and Fifteenth Amendments to the Constitution were forced

upon the South, and that in this way the North heedlessly precipitated upon the South the evils they suffered during the reconstruction period. These amendments, if not fully demanded by the war itself, were made necessary by the situation created by the seceding States immediately after the war.

Slavery had been abolished. The doctrine of secession was dead. Our contention was, therefore, established that no State had a right to secede and that the efforts the States had made in the name of secession were failures. The vindication of this claim brought with it, however, some troublesome questions. If the States had not been out of the Union it was not necessary to do anything to restore them to the Union. Acting upon this idea Andrew Johnson misled the seceding States to their great injury and prejudice. Under his direction provisional Legislatures were called and organized. The members of these Legislatures were naturally the leading men in each State, and all these, as a rule, had been in the Confederate army; and whether they had been in the army or not, they had all sympathized with the Confederate cause. They proceeded upon the theory that they were in the Union, and, being in the Union, had a right to send Senators and Members of Congress to represent them at Washington. Accordingly, within a few months after the close of actual hostilities, Alexander H. Stephens, the late Vice President of the Southern Confederacy, appeared at Washington, commissioned by the provisional Legislature of Georgia, to represent that State in the Senate of the United States. If he should be seated a precedent would thereby be established under which Members of the House and Senators from all the seceding States would resume their places in the Congress of the United States, with power to legislate for the whole country, and with power in combination with those who had sympathized with them from the North, to prevent any legislation that would give any guarantee against a resumption of hostilities if that should ever be possible, or against such proceedings as would enable them to nullify by the ballot all we had gained by the bullet.

It was a serious situation. There were many troublesome questions to deal with. One was as to the inviolability of the debt contracted to preserve the Union. Another was as to the repudiation of the debt contracted by the Southern Confederacy to destroy the Union. Another was as to the sacredness of pensions for Union soldiers. Another was as to a definition of citizenship of the United States. Another was as to the basis of representation in the Congress and Electoral College. Another was as to the proper protection of the slaves who had been freed, and as to the claims on account of their emancipation.

These were questions of vital character. A number of them could not be dealt with by mere statutory provisions. A change in the organic law was absolutely essential. After much consideration the Fourteenth Amendment was proposed. This was a very comprehensive document. It embodied the settlement of all these questions. No complaint of unfairness has ever been made as to the settlement it made of any of these questions, except that as to suffrage; and there was no just ground for any complaint as to that. Under all the circumstances it was most generous. This provision was, having direct reference to the

peculiar conditions in the South, that each State should settle for itself who should exercise the right of suffrage. If a State did not wish to give its Negro population a right to vote it was not required to do so. The only disadvantage to which such State was subject, if it denied Negroes the right to vote, was that it should suffer a corresponding reduction in the basis of representation in Congress and in the Electoral College. Under the Constitution, prior to the Thirteenth Amendment, in determining the basis of representation, five slaves were counted as three. This was called the three-fifths rule. When slavery was abolished and all were free, each man counted as one. The result of the Thirteenth Amendment was, therefore, to increase the representation of the seceding States, so that these States that had been in rebellion, by reason of the abolition of slavery, had greater political power when restored to their place in the Union after their attempt to overthrow the Government than they had prior thereto. This we did not object to, provided they allowed the colored men, who composed so large a part of that basis of representation, the right of suffrage; but we did object to it if that right of suffrage should not be allowed to the colored man, for it did not seem right then, and, looking back now through forty years of peace to that troublesome period, it does not seem right now that the white men of the seceding States should have full representation for themselves and an additional representation equally as large for their colored population, and that they alone should do all the voting. Especially did this not seem right to men who had just gone through the struggles of a great war when it was remembered that this double power of voting was to be given to the men who had waged that war and be wholly denied to the black men, who, although in a large sense unprepared for an intelligent exercise of the right of suffrage, were yet nevertheless known to be absolutely loyal to the Union and the great purposes of the men who had saved it. This Fourteenth Amendment was, therefore, not only necessary, but it was just and generous. The Southern States should have gladly and gratefully accepted it, but instead of accepting it, every one of them promptly, and in what appeared to be an offensive spirit and manner, rejected it. Under the leadership and inspiration of President Johnson, they proposed to force their way back into their places in the Government without any terms or conditions whatever, except such as President Johnson and they themselves might impose. To this program the loyal men who had saved the Union would not consent. They had no right to consent. They were anxious to do everything reasonable to bring the seceding States back into the Union and make them feel at home and happy there, but they were not willing to jeopardize all that had been gained through mere sentimentalism. Therefore it was that the policies of Andrew Johnson were rejected and reconstruction legislation followed, dividing the South into military districts and providing for State Governments and State Legislatures to be chosen by those who had been loyal, to which there should be a resubmission of the Fourteenth Amendment. This program undoubtedly did involve much that was disappointing and exasperating and humiliating to the majority of the people of the South, but they, and they alone, made either that program or something similar to it a necessity, unless we were to fritter away

the fruits of the war and allow them practically unchallenged, as well as unpunished, to resume their places in the Government.

If they had accepted the Fourteenth Amendment there would not have been any Fifteenth Amendment, for with the Fourteenth Amendment accepted and all the seceding States restored to their places in the Government, the ratification of the Fifteenth Amendment by the requisite number of States would have been an impossibility. If, therefore, there be any fault to find with anybody on account of the Fifteenth Amendment, it rests with these seceding States, for they, by their refusal to accept the Fourteenth Amendment, not only compelled reconstruction, but precipitated a submission and ratification of the Fifteenth Amendment.

They accentuated all this by their treatment of the freedmen. It would be difficult to exaggerate the unfriendly character of the legislation affecting them that was enacted immediately after the war in most of the seceding States.

Loitering statutes were common. They provided heavy fines of \$50 to \$100 to be imposed upon any one who was found loitering without work. The freedman, who had just been emancipated, had neither work nor money. No matter how zealously he might seek employment, he was helpless if employment should be refused him. Under these statutes if found idle he was a loiterer, and if he had no money, as he did not have, with which to pay his fine, he was hired to the highest bidder, thus becoming bound to labor for those who had no interest whatever in either his health or his life beyond the term for which he was hired. This brought about a condition of things worse than slavery. By another bill it was provided that every adult freedman should provide himself with a comfortable home and visible means of support within twenty days after the passage of the act, and failing to do so should be hired at public outcry to the highest bidder for the period of one year. By another law it was provided that all agricultural laborers should be compelled to make contracts for labor during the first ten days of January for the entire year. All failing to do so were liable to heavy fines and severe penalties. Scores of like statutes, some of them worse, even, than these, were enacted.

It is no exaggeration to say that the spirit of this legislation was not justice, but injustice, and that of the most malicious and revengeful character. This kind of legislation, coupled with refusal to accept what were thought to be the generous terms of the Fourteenth Amendment, naturally created a public sentiment in the North that secured the ratification of the Fourteenth Amendment and led to the Fifteenth Amendment, by which it was provided that no State should have the right to deny or abridge the right to vote on account of race, color or previous condition of servitude. But it was not passion, neither was it hatred, that brought about these results, but only a solemn sense of duty. There was never a time, except only when the Fifteenth Amendment was adopted, that it could have been adopted, and there has never been a time since it was adopted when it could have been repealed, and in my opinion there never will be a time when it can be repealed, simply because it was right then and is right now. It was a great forward step in the recognition by government of the right of citizens governed

to participate in their government and to have equal protection under it. If in some places it has failed to bring good results, that fact is due more to the bad faith that has been practiced to defeat its purpose than to any inherent trouble.

Except only to state these facts of history I have no desire to pursue this subject further at this time, but I can not help remarking that "God moves in a mysterious way His wonders to perform." Out of the vanity and folly of Andrew Johnson and the obduracy and unreasonable conduct of the seceding States came the conditions that prevented the American people from stopping short in the great work of establishing the doctrine of human equality before the law for all men. That was not the work of the Republican Party or the people of the North, but of the ever-living God. The noble men who were the actors were but His instruments to register His decrees. No one seems to know what will be the solution of the race problem, but it may be said confidently that it will not be found in trying to undo any of these works of the Almighty, for they shall endure forever,

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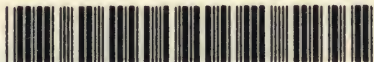
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